

**In The Matter Of:**

*AVL Powertrain Engineering, Inc. v.  
Fairbanks Morse Engine*

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*Deposition of Julie R. Mosley  
November 20, 2015*

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Excellence In Court Reporting

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1 JULIE R. MOSLEY,  
2 called as a witness, being first duly sworn,  
3 testified on oath as follows:  
4  
5 EXAMINATION  
6 By Mr. Herrmann:  
7 Q Good morning, Ms. Mosley. Could you state your  
8 full name for our record, please.  
9 A Julie Mosley.  
10 Q Do you have a middle name?  
11 A Renae.  
12 Q Were you formerly known as Julie Gilson?  
13 A Yes.  
14 Q When did your name change from Gilson to Mosley?  
15 A In 2005.  
16 Q When in 2005?  
17 A August 2005.  
18 Q Was that due to marriage?  
19 A Yes.  
20 Q Have you ever given a deposition before?  
21 A Never.  
22 Q The rules are fairly simple. You will provide  
23 responses to my questions. If at any time you  
24 don't understand a question, I would ask that you  
25 please ask me to clarify it for you before you

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1 answer. Fair enough?  
2 A Will do.  
3 Q If you need a break, just let me know. We can  
4 take one. All I ask is that we don't break while  
5 one of my questions is pending. Fair enough?  
6 A Fair.  
7 Q Today we're going to be referring to FME which  
8 will refer to Fairbanks Morse Engine. Is that  
9 fair?  
10 A Fair.  
11 Q When I refer to AVL, that will be AVL Powertrain  
12 Engineering, Inc., the plaintiff in this case.  
13 Fair enough?  
14 A Fair.  
15 Q What's your current residence address?  
16 A [REDACTED]  
17 Q Are you currently employed?  
18 A Yes.  
19 Q Where?  
20 A DuPont Industrial Biosciences.  
21 Q Where is that company located?  
22 A It's located at 2600 Kennedy Drive, Beloit,  
23 Wisconsin.  
24 Q How long have you been at DuPont?  
25 A Since June 2012.

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1 MR. HERRMANN: Plaintiff's 15,  
2 Steve.  
3 MR. DeGEORGE: Okay.  
4 Q Today we will be looking at a few documents,  
5 Ms. Mosley. At any time feel free to review an  
6 entirety of a document. You can have as much time  
7 as you need. Sometimes my questions will only  
8 refer to parts. I will leave it to your judgment  
9 how much of the document you need to review to  
10 answer my question. Fair?  
11 A Fair.  
12 Q You have before you what's been previously marked  
13 as Plaintiff's Exhibit 15. Do you recognize that  
14 document?  
15 A I do.  
16 Q What is this?  
17 A It is the Fairbanks Morse Engine air permit that  
18 was from 2005 until 2010.  
19 Q So that permit governed the air emissions  
20 compliance for WDNR with respect to the Beloit  
21 facility during that timeframe you described?  
22 A Correct.  
23 Q Was there any other permit at this time that  
24 governed air emissions at the Beloit facility?  
25 A I don't believe so, but the reason for my

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1 hesitation is we submitted a renewal permit  
2 application within that timeframe to renew this  
3 permit along with a construction permit that I  
4 believe we never received during that timeframe.  
5 Q When were those submittals made that you just  
6 described?  
7 A The air construction permit application would have  
8 been in 2009. That would have included the AVL  
9 engines. The air permit renewal application would  
10 have been 18 months prior to the expiration date  
11 of May 2010.  
12 Q Do you recall exactly when?  
13 A I do not.  
14 Q What is the difference between the air  
15 construction permit and the air permit?  
16 A The air construction permit would have been for  
17 modifications.  
18 Q Modifications to what exactly?  
19 A Anything within the permit that we were modifying.  
20 In this case, the one that stands out the most  
21 would have been the test stands for the OP  
22 building we would have made modifications to.  
23 Q As of August 28, 2008, is this, Plaintiff's  
24 Exhibit 15, the permit that governed emissions  
25 from the Beloit facility?

Page 9	Page 11
<p>1 A Can you say the date one more time?</p> <p>2 Q Sure. August 28, 2008.</p> <p>3 A Yes. I believe so.</p> <p>4 Q If you could turn to Page 18 of Plaintiff's</p> <p>5 Exhibit 15. Go one more page to 19. I call your</p> <p>6 attention to footnote 22 on that page.</p> <p>7 A Yes.</p> <p>8 Q Do you see it?</p> <p>9 A Yes.</p> <p>10 Q What does that language in footnote 22 mean to</p> <p>11 you?</p> <p>12 A It means that when we had originally submitted the</p> <p>13 permit application in 2005, there were no engines</p> <p>14 hooked to these test stands, so they were not</p> <p>15 modeled and included within the air permit because</p> <p>16 there was no testing done on those.</p> <p>17 Q So as of 2005, when you submitted the permit, how</p> <p>18 long had it been before that time when engines had</p> <p>19 been tested on the stacks that are referenced in</p> <p>20 footnote 22?</p> <p>21 A I wouldn't know without pulling records.</p> <p>22 Q How did you come to know that at that time in</p> <p>23 2005, when you submitted this permit, that no</p> <p>24 engines were being tested in these stacks?</p> <p>25 A Internal review working with engineering at the</p>	<p>1 A Yes.</p> <p>2 Q What testing was proceeding in the OP building at</p> <p>3 that time before you submitted this 2005 permit?</p> <p>4 A I don't exactly recall.</p> <p>5 Q Do you know for sure what engines were or were not</p> <p>6 being tested at that time?</p> <p>7 A I wouldn't be able to recall that.</p> <p>8 Q Now, you just explained these stacks were not</p> <p>9 included in the permit application because engines</p> <p>10 had not been tested up to the time of the permit's</p> <p>11 submission, correct?</p> <p>12 A Correct.</p> <p>13 Q Did you know whether FME had any plans in the</p> <p>14 future to use those stacks for future engine</p> <p>15 testing?</p> <p>16 A We would have evaluated it internally for a</p> <p>17 five-year look, and, to the best of our knowledge,</p> <p>18 at that time, when we submitted it -- those were</p> <p>19 the engines that we submitted that we would be</p> <p>20 testing within that five-year period.</p> <p>21 Q So then it's fair to say that the stacks</p> <p>22 referenced in footnote 22 FME did not intend to</p> <p>23 use for at least the period of this permit that</p> <p>24 was applied for, correct?</p> <p>25 A That's correct. What was known at that time</p>
Page 10	Page 12
<p>1 time on what engines were coming up from sales</p> <p>2 that needed to be tested.</p> <p>3 Q And who did you consult with for that information?</p> <p>4 A It would have been operations and engineering.</p> <p>5 Q Who would that have been? Who are the people?</p> <p>6 A I don't recall.</p> <p>7 Q Did you have any personal knowledge without</p> <p>8 consulting with ops and engineering what those</p> <p>9 stacks were being used for as of the time this</p> <p>10 permit was applied for?</p> <p>11 A I don't recall.</p> <p>12 Q Would you visit the OP building at the Beloit</p> <p>13 facility to see what operations were being</p> <p>14 conducted there?</p> <p>15 A Yes.</p> <p>16 Q So did you have any personal knowledge, based on</p> <p>17 your visit to the OP building before this permit</p> <p>18 was submitted, as to whether or not engines were</p> <p>19 being tested through those stacks?</p> <p>20 A Yes.</p> <p>21 Q And what was your conclusion?</p> <p>22 A There was not much testing going on at the OP</p> <p>23 building. It was largely -- most of the testing</p> <p>24 was in the large engine building.</p> <p>25 Q Up to that point?</p>	<p>1 period.</p> <p>2 Q Now, if you look at footnote 22, the language says</p> <p>3 "Four existing stacks, S20C, S21A, S21B and S21C,</p> <p>4 were not considered in the modeling because they</p> <p>5 are no longer being used, and are being removed</p> <p>6 from the facility." Do you see that?</p> <p>7 A I do.</p> <p>8 Q Were they being removed from the facility?</p> <p>9 A They were not removed from the facility.</p> <p>10 Q Were they intended to be removed from the</p> <p>11 facility?</p> <p>12 A I don't recall.</p> <p>13 Q Were you the lead person at FME at the time who</p> <p>14 was responsible for submitting this permit</p> <p>15 application?</p> <p>16 A Yes, I was.</p> <p>17 Q And at that time you reviewed this footnote 22,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And what was your understanding of the words</p> <p>21 "being removed from the facility"?</p> <p>22 A I'm sorry. I just don't recall what I would have</p> <p>23 thought reviewing it back then.</p> <p>24 Q You had no personal knowledge when this was</p> <p>25 submitted whether or not those stacks were in fact</p>

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<p>1 being removed from the facility?</p> <p>2 MR. DeGEORGE: Objection to the</p> <p>3 form.</p> <p>4 You can answer.</p> <p>5 Q You can answer.</p> <p>6 MR. DeGEORGE: If you can answer.</p> <p>7 A I just don't recall.</p> <p>8 Q Well, would you have submitted this permit to WDNR</p> <p>9 for approval if it were untrue that the stacks</p> <p>10 were being removed from the facility?</p> <p>11 A What I recall was we submitted it knowing which</p> <p>12 stacks we were using. I don't recall language</p> <p>13 that we needed to remove the stacks.</p> <p>14 Q So who put this language in here if not you?</p> <p>15 A Obviously it came from the DNR.</p> <p>16 Q The DNR said that FME would be removing stacks?</p> <p>17 A It may have been their interpretation since we no</p> <p>18 longer used those stacks that they were to be</p> <p>19 removed.</p> <p>20 Q So this footnote 22 is language that WDNR drafted?</p> <p>21 A They wrote the whole entire permit. Yes. We did</p> <p>22 not write a permit.</p> <p>23 Q How did WDNR know at this time of the permit that</p> <p>24 those stacks were actually being removed?</p> <p>25 A I don't recall.</p>	<p>1 Q Is that an entity engaged by WDNR?</p> <p>2 A No.</p> <p>3 Q It's engaged by FME, correct?</p> <p>4 A Yes.</p> <p>5 Q So the modeling was conducted pursuant to FME's</p> <p>6 relationship with ERM, right?</p> <p>7 A Correct.</p> <p>8 Q And the information ERM received for its modeling</p> <p>9 came from FME?</p> <p>10 A Correct.</p> <p>11 Q What is the importance of modeling to the ultimate</p> <p>12 grant of a permit?</p> <p>13 A The DNR also does a model. In order for us to</p> <p>14 submit an application, we want to make sure that</p> <p>15 we have modeled as well to understand that we will</p> <p>16 be within the emissions maximum requirement for</p> <p>17 the permit.</p> <p>18 Q Did you submit such a model to WDNR?</p> <p>19 A I don't recall because they run their own. So I'm</p> <p>20 not sure if we submitted it or not.</p> <p>21 Q Well, it was a requirement for FME to submit its</p> <p>22 model to WDNR to get the permit, right?</p> <p>23 A I'm not sure on the model, again, because they run</p> <p>24 their own model.</p> <p>25 Q Right. What information did FME provide to WDNR</p>
Page 14	Page 16
<p>1 Q How did DNR know what FME was doing?</p> <p>2 A They would have known from the permit application</p> <p>3 that we submitted.</p> <p>4 Q So the permit application provided the information</p> <p>5 to WDNR that WDNR relied on for this permit?</p> <p>6 A Correct.</p> <p>7 Q So whatever FME told WDNR in that permit</p> <p>8 application, that's what the WDNR used?</p> <p>9 A That's correct.</p> <p>10 Q So if in that permit application it says in a</p> <p>11 communication by or on behalf of FME to WDNR that</p> <p>12 those stacks were being removed, then WDNR got</p> <p>13 that from FME, right?</p> <p>14 A Yes. I would want to review -- the document would</p> <p>15 state who wrote it.</p> <p>16 Q Let's return to the earlier language here that the</p> <p>17 four existing stacks were not considered in the</p> <p>18 modeling. Do you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q What does modeling refer to there?</p> <p>21 A It's a method that we utilized a consultant for to</p> <p>22 determine what our dispersion is to understand</p> <p>23 what the emissions would be from our facility.</p> <p>24 Q And your consultant was?</p> <p>25 A ERM.</p>	<p>1 about these stacks that went into the model?</p> <p>2 A It would have been what was submitted in the air</p> <p>3 permit application.</p> <p>4 Q So in reading footnote 22, does that mean that</p> <p>5 those stacks that are listed here were not</p> <p>6 permitted under this permit?</p> <p>7 A Can you say that one more time?</p> <p>8 Q Sure. If you read footnote 22, does that tell you</p> <p>9 that the referenced stacks are not included in</p> <p>10 this permit?</p> <p>11 A I'm unsure.</p> <p>12 Q Why are you unsure?</p> <p>13 A Because it's subject to interpretation.</p> <p>14 Q What about it is subject to interpretation?</p> <p>15 A It's listed as a footnote, and, in conversation</p> <p>16 with Mark Thimke, who is an environmental attorney</p> <p>17 that was representing AVL -- he told me that a</p> <p>18 footnote is not compliance demonstration.</p> <p>19 Q When did you talk to Mark Thimke about that?</p> <p>20 A It would have been sometime in 2011.</p> <p>21 Q Do you know when AVL engaged Mr. Thimke?</p> <p>22 A It's roughly April or May 2011.</p> <p>23 Q And he was counsel for AVL at that time?</p> <p>24 A Correct.</p> <p>25 Q Prior to speaking to Mr. Thimke, did you have any</p>

<p style="text-align: right;">Page 17</p> <p>1 understanding of what this footnote meant?</p> <p>2 A My interpretation would have been that we were not</p> <p>3 allowed to emit from these stacks.</p> <p>4 Q Did you convey that interpretation to any</p> <p>5 representative of AVL at any time?</p> <p>6 A At the time that we had conversation in 2008, we</p> <p>7 had talked about what test stands AVL would be</p> <p>8 using. And then at the time I told them we would</p> <p>9 need to submit a construction permit, an</p> <p>10 application for a construction permit, to be able</p> <p>11 to test those engines.</p> <p>12 Q So you told AVL what stacks AVL would be using?</p> <p>13 A No.</p> <p>14 Q You didn't tell them that?</p> <p>15 A No.</p> <p>16 Q What did you tell them about the stacks in the OP</p> <p>17 building?</p> <p>18 A I don't know that we specifically had</p> <p>19 conversations about the stacks. What I had asked</p> <p>20 from them is to give me their plan on what they</p> <p>21 plan to test and then on what test stands they</p> <p>22 plan to test on.</p> <p>23 Q So prior to August 28th of 2008, you had never</p> <p>24 told any representative of AVL anything about</p> <p>25 these stacks that are referenced in this footnote?</p>	<p style="text-align: right;">Page 19</p> <p>1 application.</p> <p>2 Q And at that 2008-2009 timeframe, when you learned</p> <p>3 which stands AVL would be testing on, did you then</p> <p>4 tell AVL about these stacks referenced in</p> <p>5 footnote 22?</p> <p>6 A I don't recall.</p> <p>7 Q Wouldn't you feel that was important information</p> <p>8 for AVL to have?</p> <p>9 A What was important for AVL to understand was I</p> <p>10 needed to submit a construction permit</p> <p>11 application. We had the availability for the test</p> <p>12 stand. We wanted to work in partnership with them</p> <p>13 to be able to allow them to test engines.</p> <p>14 Q So that means they couldn't begin testing engines</p> <p>15 until that permit you just described had been</p> <p>16 achieved?</p> <p>17 A Correct.</p> <p>18 Q Do you know whether testing began on AVL engines</p> <p>19 before that permit you just described was</p> <p>20 achieved?</p> <p>21 MR. DeGEORGE: I think she</p> <p>22 described an application, not a permit.</p> <p>23 Q Fair enough. Before you submitted the</p> <p>24 application.</p> <p>25 A Before I submitted the application? No.</p>
<p style="text-align: right;">Page 18</p> <p>1 A I don't recall.</p> <p>2 Q Did you tell AVL prior to August 28, 2008, that</p> <p>3 any particular stack in the OP building could be</p> <p>4 used by them?</p> <p>5 A No. I would not have said that.</p> <p>6 Q Why not?</p> <p>7 A The way that the test stands are, it actually --</p> <p>8 it costs a lot of money to revise a test stand. I</p> <p>9 was not involved with the contract, and I would</p> <p>10 not necessarily know what engines FME has that</p> <p>11 they need to test, so they would need to submit</p> <p>12 that request through sales and engineering.</p> <p>13 Q So the decision of which stacks AVL would use</p> <p>14 would be decided at some point later?</p> <p>15 A I believe so.</p> <p>16 Q Do you know when that decision was made?</p> <p>17 A I would not know that.</p> <p>18 Q Did there come a time when you learned which</p> <p>19 stacks were assigned to AVL?</p> <p>20 A Yes. I was submitted information from AVL on four</p> <p>21 specific test stands and what type of engine they</p> <p>22 were to test on those four test stands.</p> <p>23 Q When did that happen?</p> <p>24 A It would have been in the 2008-2009 time period</p> <p>25 prior to me submitting the construction air permit</p>	<p style="text-align: right;">Page 20</p> <p>1 Q But the application was submitted so you could get</p> <p>2 approval for what AVL was doing, right?</p> <p>3 A Correct.</p> <p>4 Q Do you know whether AVL began testing before that</p> <p>5 approval was received?</p> <p>6 A We never received an air permit because we had</p> <p>7 numerous times asked AVL which engines they were</p> <p>8 going to be bringing onsite and I never received</p> <p>9 anything specific in writing from them.</p> <p>10 Q But AVL began testing engines at the facility,</p> <p>11 right?</p> <p>12 A Correct.</p> <p>13 Q And they began testing engines through at least</p> <p>14 some of the stacks that are described in</p> <p>15 footnote 22, correct?</p> <p>16 A My recollection is the earliest testing was done</p> <p>17 on a test stand that was within the permit.</p> <p>18 Q You have no knowledge of whether AVL ever put</p> <p>19 emissions through one of these stacks that are</p> <p>20 referenced in footnote 22?</p> <p>21 A They certainly did because I had to fill out a</p> <p>22 compliance deviation report.</p> <p>23 Q And that was before any changes were made to this</p> <p>24 permit, correct?</p> <p>25 A Correct.</p>

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<p>1 Q So FME allowed AVL to go forward and test engines 2 before any modifications were made to this permit 3 that we're looking at right now, correct? 4 A Correct I guess. 5 Q Did anyone at FME at any time to your knowledge 6 ever tell AVL that those stacks could not be used? 7 A I wouldn't know. 8 Q Why would you not know? 9 A I'm not sure what other conversations people had 10 with AVL. 11 Q When did it first come to your attention that AVL 12 was using stacks that are mentioned in this 13 footnote 22? 14 A In 2011. 15 Q How did that come about? 16 A When we were looking at alternatives because of 17 closing in on fuel usage -- at that point in time 18 I personally went out to the OP building and saw 19 that there were engines sitting on the stand that 20 I was unaware that they had an engine on. 21 Q When was this? Do you remember exactly? 22 A It would have been 2011. 23 Q So in 2011 -- that's the first time that you 24 personally saw AVL engines using stacks that are 25 addressed in footnote 22?</p>	<p>1 time? 2 A I wouldn't know. 3 Q More than one? 4 A I would not know. 5 Q Well, is this the same 2011 time period that you 6 went into the OP building and saw more than the 7 first engine on a stand? 8 A It's a different time period. 9 Q What's the difference between the time when you 10 saw more than one AVL engine in 2011 and the time 11 that you started talking about fuel allocations 12 when you didn't know how many engines AVL was 13 testing? 14 A Again, I would have to have someone show me the 15 records of what AVL was testing, but they were 16 testing an engine on a test stand that was 17 permitted. Any additional engines after that -- I 18 was unaware when they came into the Fairbanks 19 facility. 20 Q Did you personally have anything to do with which 21 test stands or emissions stacks AVL was assigned 22 to use in the OP building? 23 A No. 24 Q Did anyone come to you and tell you what stands 25 and stacks AVL would be assigned and ask for your</p>
Page 22	Page 24
<p>1 A Correct. 2 Q Had you not visited the OP building prior to that 3 since the time AVL came aboard? 4 A I had visited there, but they were on a test stand 5 that was allowed within the permit. 6 Q How many engines were there on test stands allowed 7 within the permit when you did that earlier visit? 8 A I know there was one, but, as to the total number, 9 I'm unsure. 10 Q So your best recollection is that you visited the 11 OP building at some point prior to 2011 when you 12 saw engines on test stands for non-permitted 13 stacks and at that earlier visit you saw an engine 14 on a permitted stack so you didn't see any cause 15 for concern. 16 A Correct. 17 Q Then when you next came in and you saw AVL engines 18 using non-permitted stacks, what was your reaction 19 to that? 20 A I believe what had happened -- I was unaware of 21 the stacks that they were using until we had 22 discussions with AVL about fuel use alternatives. 23 Q And when was that? 24 A Roughly April of 2011. 25 Q Now, how many engines did AVL have testing at that</p>	<p>1 evaluation? 2 A No. 3 Q You were at that time in what position at FME? 4 A April 2011? 5 Q Yes. 6 A I may have been the human resources manager. 7 Q In May of 2011? 8 A Uh-huh. 9 Q Were you dealing with environmental issues at that 10 time? 11 A That was underneath my area of responsibility as 12 well. 13 Q What were your responsibilities with respect to 14 environmental compliance at FME? 15 A Submitting the compliance report documentation. 16 Q What else? 17 A Just overall environmental compliance with all 18 permits. 19 Q For how long a period of time did you have 20 responsibility for overall environmental 21 compliance at FME? 22 A Since 1999. 23 Q Through what period? 24 A I guess until I left in May of 2012. 25 Q Who did you report to with respect to</p>

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1 environmental issues?  
2 A I reported to John Bottorff.  
3 Q Anyone else during the timeframe you have just  
4 described?  
5 A Yes. Prior to John, which was early on, I  
6 reported to operations. That was pre-AVL  
7 timeframe.  
8 Q Any particular person in operations?  
9 A Rick Strauss.  
10 Q So for the timeframe you have described, have you  
11 given me the two people you direct reported to?  
12 A Correct.  
13 Q Who reported to you with respect to environmental  
14 compliance issues?  
15 A I hired Rebecca Bratton as the EHS manager.  
16 Q What is EHS?  
17 A Environmental health and safety.  
18 Q When did you hire her?  
19 A I'm unsure.  
20 Q Can you give me a year?  
21 A I think 2011.  
22 Q Now, prior to Rebecca Bratton being hired on as  
23 EHS, did you hold that position?  
24 A Yes.  
25 Q What was that title?

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1 A EHS manager.  
2 Q Did you have that title from the time in 1999 you  
3 started with environmental compliance  
4 responsibilities?  
5 A No, I did not.  
6 Q When did the title change?  
7 A 2000.  
8 Q What was it prior to 2000?  
9 A Environmental engineer.  
10 Q When Rebecca Bratton hired on, did you personally  
11 retain responsibilities over environmental  
12 compliance issues?  
13 A Yes. She reported directly to me.  
14 Q Did you have any other people reporting to you  
15 with respect to environmental issues?  
16 A Not for environmental issues.  
17 Q All right. So until Rebecca came on, you were the  
18 person responsible at FME for environmental  
19 compliance, correct?  
20 A Yes.  
21 Q Was there anyone else at FME during the timeframe  
22 you have described who had responsibilities  
23 relative to environmental compliance?  
24 A No.  
25 Q At no time did anyone at FME ever come to you as

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1 the environmental health and safety compliance  
2 person and ask you at any time whether it was okay  
3 to give AVL any particular stacks to use?  
4 A No.  
5 Q Did you ever ask anyone else what stacks they were  
6 assigning for AVL use?  
7 A Yes.  
8 Q Who did you ask?  
9 A I believe it was Joe Eves and Pete DiCaro.  
10 Q When did you ask that question?  
11 A From what my memory serves, we had discussions  
12 early on in 2008 and then -- there just wasn't any  
13 testing that was going on. It kind of faded from  
14 the scene. There wasn't much discussion on that.  
15 So it would have been the timeframe that AVL  
16 started to receive some engine contracts. Maybe  
17 the 2010-2011 timeframe.  
18 Q My question specifically is: Did you ever ask  
19 anyone at FME which stacks were going to be  
20 assigned to AVL? You mentioned discussions you  
21 had, but you didn't tell me whether or not you  
22 ever asked anyone which stacks were going to be  
23 assigned to AVL.  
24 A I believe so, but I don't clearly recall.  
25 Q When did you ask that question?

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1 A It would have been in the 2010-2011 timeframe.  
2 Q So prior to August 28th of 2008, you don't recall  
3 ever asking anyone at FME which stacks were going  
4 to be assigned to AVL?  
5 A Say the date one more time, please.  
6 Q Sure. Prior to August 28 of 2008.  
7 A No.  
8 Q So no one at FME ever told you which stacks AVL  
9 would use, and you never asked anyone prior to  
10 that date of August 28, 2008, which stacks AVL  
11 would use, correct?  
12 MR. DeGEORGE: Object to form.  
13 That's not what she said.  
14 Q I'll be happy to rephrase my question if you  
15 didn't understand.  
16 A Please repeat it one more time.  
17 Q Let's break it up. Prior to August 28th of 2008,  
18 you personally never asked anyone which stacks AVL  
19 would get for its testing.  
20 A The way the conversation was led is that AVL was  
21 interested in testing at Fairbanks; that they were  
22 trying to work out arrangements for that.  
23 Q That's fair. But that doesn't answer my question.  
24 I want to know whether you asked AVL --  
25 whether you asked anyone at FME prior to

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<p>1 August 28, 2008, which stacks AVL would get. Did 2 that ever happen?</p> <p>3 A Yes, but I'm unsure of the timeframe because we 4 submitted the construction air permit application 5 in 2009. There's a time period before that 6 that -- the question was asked the question was 7 answered.</p> <p>8 Q But you don't know whether you asked that question 9 of which stacks AVL would have at any time prior 10 to August 28th 2008.</p> <p>11 A I'm unclear about the timing or when I learned of 12 that information.</p> <p>13 Q Prior to August 28th of 2008, did anyone from FME 14 tell you which stacks AVL would get?</p> <p>15 A The same thing. There were four test stands that 16 were designated at that time. I'm unsure of the 17 timeframe.</p> <p>18 Q So prior to August 28th of 2008, though, there 19 were four test stands designated for AVL's use?</p> <p>20 A Correct.</p> <p>21 Q How do you know that?</p> <p>22 A Because I submitted an air construction permit 23 application.</p> <p>24 Q And that you submitted in 2009?</p> <p>25 A Correct.</p>	<p>1 A There was a potential for four test stands that 2 they were interested in testing on.</p> <p>3 Q That they were interested in testing on.</p> <p>4 A Yes.</p> <p>5 Q What does that mean?</p> <p>6 A It had to deal with -- I believe one of the test 7 stands were shared. It has to deal with the size 8 of the engine. You can't just pick an engine and 9 find a certain test stand. There's parameters 10 that go with it. Where it will fit.</p> <p>11 Q So then your answer is at the time you submitted 12 the 2009 construction permit, you still didn't 13 know which test stands AVL would use.</p> <p>14 A At the time of the permit application there were 15 four test stands that AVL had the potential to 16 use.</p> <p>17 Q Who else had the potential to use them?</p> <p>18 A Fairbanks.</p> <p>19 Q Do you know what the test plans were for Fairbanks 20 at that time?</p> <p>21 A I'm unsure as of today. I wouldn't know.</p> <p>22 Q So when the 2009 construction permit was 23 submitted, that could have been used by Fairbanks 24 as much as it could have been used by AVL?</p> <p>25 A No, because the way we did -- the way we submitted</p>
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<p>1 Q So by the time you submitted the 2009 air permit 2 application, you knew which stacks AVL had been 3 assigned for those four test cells?</p> <p>4 A From what they had told me then, yes.</p> <p>5 Q From what who had told you then?</p> <p>6 A AVL. What they had submitted to me.</p> <p>7 Q Do you know if AVL just chose whatever test stands 8 it wanted in the OP building?</p> <p>9 A I wouldn't know. I wasn't part of those 10 discussions.</p> <p>11 Q So you learned that AVL would have four test 12 stands, and that was prior to August 28th of 2008, 13 right?</p> <p>14 A I'm unclear of what the timing is. Sometime 15 around there.</p> <p>16 Q Just earlier you told me that the four test stands 17 had been assigned prior to August 28th of 2008.</p> <p>18 A I'm not sure when they were assigned.</p> <p>19 Q Okay.</p> <p>20 A I know the information for the air permit, 21 construction permit.</p> <p>22 Q So you're certain, though, of the date that -- 23 when the construction air permit was submitted in 24 2009, by that time you personally knew that four 25 test stands had been assigned to AVL, correct?</p>	<p>1 an air permit application was based on which 2 engine is going to sit on which test stand so we 3 can get the modeling appropriate.</p> <p>4 Q So in order to submit the permit application or 5 the construction permit application in 2009, you 6 would have had to know which AVL engines were on 7 which test stands?</p> <p>8 A Correct.</p> <p>9 Q So you had that information when you submitted for 10 the permit, correct?</p> <p>11 A Correct.</p> <p>12 Q Otherwise you couldn't have submitted for the 13 permit, right?</p> <p>14 A Correct.</p> <p>15 Q So for four test stands -- AVL had provided engine 16 data for those four test stands, right?</p> <p>17 A Yes.</p> <p>18 Q And that's what was submitted for the 2009 permit, 19 right?</p> <p>20 A Yes.</p> <p>21 Q Now, at that time, when you submitted for the 2009 22 permit, you also knew which stacks had been 23 assigned to AVL, correct?</p> <p>24 A There's a stack that's associated with each test 25 stand. Correct.</p>

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1 Q So, therefore, you knew the test stands, and,  
2 therefore, you knew which stacks were associated?  
3 A Yes.  
4 Q And the association of the test stands to the  
5 stacks is something that you personally knew prior  
6 to the 2009 application, right?  
7 A Yes.  
8 Q And were any of those stacks the stacks that are  
9 identified in footnote 22?  
10 A Yes.  
11 Q Which ones are those?  
12 A I would need to pull the permit application.  
13 Q But at least one of them was assigned to AVL,  
14 right?  
15 A I would need to pull the air permit application.  
16 Q But you knew at the time that stacks had been  
17 assigned to specific test cells assigned to AVL,  
18 right?  
19 A Correct.  
20 Q So at that time did you go to either anyone at FME  
21 or anyone at AVL and say "These stacks are not  
22 included in our permit"?  
23 A I don't believe so.  
24 Q Why not?  
25 A Because, again, compliance demonstration is based

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1 on fuel, and there were no engines that were being  
2 tested at that time period. We were working to  
3 get a revised permit.  
4 Q So you didn't think it was necessary to tell AVL  
5 that stacks it had been assigned were not included  
6 under the permit.  
7 A I didn't have those conversations with AVL.  
8 Q Fast forward to when AVL begins testing its first  
9 engine on an un-permitted stack. Had the 2009  
10 permit been approved by that time?  
11 A No.  
12 Q So AVL began testing on an un-permitted stack,  
13 right?  
14 A It's my understanding AVL began testing on a test  
15 stand that wasn't included in the air permit  
16 application because I was unaware that they chose  
17 a different test stand.  
18 Q So you were unaware at the time AVL first started  
19 testing on an un-permitted stack, right?  
20 A Correct.  
21 Q You only found out about that later?  
22 A Correct.  
23 Q Who was the person who was interfacing with AVL  
24 and assigning the stacks for their use?  
25 A I'm unsure.

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1 Q Who was it at FME who allowed AVL to use stacks  
2 that weren't included in this permit?  
3 A I'm unsure.  
4 Q Did you ever find out who that was?  
5 A No.  
6 Q Footnote 22 is not the only place in this permit  
7 where stacks are indicated as being omitted,  
8 correct?  
9 A I'm unclear to your question.  
10 Q Sure. Footnote 22 is not the only place in this  
11 permit that addresses the un-permitted status of  
12 these stacks, right?  
13 A Please clarify the other locations you're speaking  
14 of.  
15 Q I'm asking you if you know whether there are other  
16 locations other than footnote 22.  
17 A I don't believe so. I'm sorry. I thought you  
18 said there were others.  
19 Q Yes. I'm asking you if you remember where there  
20 are others.  
21 A No. I do not know.  
22 Q Let's turn to the first page of Exhibit 15. Do  
23 you see the top part of this permit, the third  
24 line down after the title "Source Numbers"? Do  
25 you see that line? It's on the very first page of

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1 the exhibit. It's the third line down. Do you  
2 see where it references source numbers?  
3 A Yes.  
4 Q Are those stacks?  
5 A Those are stacks or units.  
6 Q What's the difference between a stack and a unit?  
7 A Within the test stand -- in the OP, which is S20  
8 and -- actually, process 20 and process 21 there's  
9 more than one stack, so it's a source.  
10 Q Well, the process numbers are in the line above,  
11 right?  
12 A Yes.  
13 Q What's P20 through P22 in the line above? What  
14 does that reference?  
15 A The test stands.  
16 Q Where are the P20 through P22 test stands located?  
17 A P20 and 21 is the OP building, and P22 is the  
18 large engine building.  
19 Q So P20 through P22 refers to the entirety of the  
20 OP building and the large engine building,  
21 correct?  
22 A Correct. It refers to the testing of the OP  
23 building and the large engine building.  
24 Q Fair enough.  
25 If you return to footnote 22, there's the

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1 reference to the stacks S20C, C21A, S21B, and  
2 S21C. Now, these happen to be stacks, correct?  
3 A Correct.  
4 Q So they're exhaust stacks that are attached to the  
5 building that have emissions going through them,  
6 right?  
7 A Yes.  
8 Q But they are also called units?  
9 A For me, I know that there's more than one stack  
10 that's associated with that process.  
11 Q But is unit a generic name for --  
12 A I wouldn't -- it was just something that I stated  
13 in my own mind right now so I could understand as  
14 part of the test stand there was more than one  
15 stack associated with that process.  
16 Q So what does source number refer to here?  
17 A I would believe it would refer to the source from  
18 where emissions come from.  
19 Q So it would include stacks, right?  
20 A I believe so.  
21 Q Are the stacks that are referenced in  
22 footnote 22 -- do they appear in the line of  
23 source numbers on the first page of this permit?  
24 A It would appear that they're included.  
25 Q Where are they included?

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1 A They don't have the letter after it, so it just  
2 says S20 through S22. So S20 -- in reviewing  
3 this, I would think that it would include any of  
4 those.  
5 Q So anyone looking at the face of this permit would  
6 believe that the stacks referenced in footnote 22  
7 were covered by this permit?  
8 A I'm unsure.  
9 Q Why are you unsure?  
10 A Because it looks as though they would be included.  
11 Q So as the person in charge of environmental  
12 compliance at FME as of August 8th of 2008, you  
13 would look at this permit and -- would you  
14 determine that those stacks in footnote 22 were  
15 included or not included in this permit?  
16 A I would determine that they were not included.  
17 Q Why?  
18 A From knowledge of how the air permit application  
19 was submitted in 2005.  
20 Q And who had knowledge of the application permit in  
21 2005?  
22 A I did.  
23 Q The application in 2005 -- was that ever provided  
24 to anyone at AVL?  
25 A No.

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1 MR. DeGEORGE: Can we take a break?  
2 (Recess)  
3 (Exhibit No. 103 marked for  
4 identification)  
5 Q Ms. Mosley, you have Plaintiff's Exhibit 103.  
6 Again, my earlier talk with you applies. Feel  
7 free to take as much time as you need to review  
8 the document, but my first question to you for  
9 this exhibit will be whether you recall this  
10 exhibit. But, again, take your time to  
11 familiarize yourself with it.  
12 A I recall it.  
13 Q What is this exhibit?  
14 A It's our construction permit application to the  
15 Wisconsin DNR.  
16 Q Is this the application you referenced earlier  
17 that would have ultimately become Plaintiff's  
18 Exhibit 15 that we looked at earlier? Take your  
19 time. Look at 15 again if you need to. I just  
20 want to understand whether Plaintiff's Exhibit 103  
21 is the application that FME submitted in support  
22 of getting the permit that is Plaintiff's  
23 Exhibit 15.  
24 A I believe we received an actual construction  
25 permit from this application.

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1 Q And that would be a different permit than what is  
2 embodied in Plaintiff's Exhibit 15?  
3 A I just recall having a construction permit as  
4 well.  
5 Q Well, let me revisit something you said earlier  
6 then because now I'm -- I'm admittedly confused.  
7 I thought you told me earlier that Plaintiff's  
8 Exhibit 15 was the only governing permit for  
9 emissions at the FME facility from 2005 until it  
10 this renewal. Are you suggesting there was  
11 another different permit that also controlled at  
12 the same time? I'm just asking. I'm not  
13 suggesting one way or the other. I just want to  
14 understand that. I want you to take as much time  
15 with the documents as you need. There's no rush  
16 here.  
17 A I believe that's correct.  
18 Q You believe that Plaintiff's Exhibit 103 was  
19 submitted by FME to WDNR in support of obtaining  
20 the permit that is Plaintiff's Exhibit 15?  
21 A Yes.  
22 Q With respect to Plaintiff's Exhibit 103, is this  
23 the submittal you described earlier where FME  
24 would have provided the necessary information for  
25 modeling in support of the permit?

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1 A Yes.  
 2 Q I notice on the front cover page signed by  
 3 Mr. Dusing -- who is Mr. Dusing?  
 4 A He was hired on behalf of Fairbanks and worked for  
 5 ERM to prepare the documentation.  
 6 Q Did you interact with Mr. Dusing to prepare this?  
 7 A Yes.  
 8 Q Was Mr. Dusing your primary contact?  
 9 A Yes.  
 10 Q Do you need some time, Ms. Mosley?  
 11 A Yes.  
 12 MR. HERRMANN: Let's take a break.  
 13 (Recess)  
 14 Q Other than Mr. Dusing, did you work with anyone  
 15 else at his company?  
 16 A What time period are you speaking of?  
 17 Q Let's look at the time this was submitted. First  
 18 of all, I would like to get clarity on one thing  
 19 if you could help me out. I think the cover  
 20 letter is misdated. It says January 12, 2004, but  
 21 by the stamps and other indications in the  
 22 document, it looks like it was actually submitted  
 23 in January of 2005.  
 24 A I would agree with you.  
 25 Q So as of the January 2005 timeframe in connection

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1 with this submission here, Plaintiff's  
 2 Exhibit 103, who were you interacting with at ERM?  
 3 A That would have been just Dave Dusing.  
 4 Q For this submission that's Plaintiff's  
 5 Exhibit 103, what was the process you went through  
 6 with Mr. Dusing to prepare this?  
 7 A What I remember most is we made modification to a  
 8 test stand, it was S21F. There were also several  
 9 things that were incorrect in the air permit, so  
 10 we tried to review those items and clean them up  
 11 to the best of our ability.  
 12 Q When you say "the air permit" -- at this point in  
 13 time, which permit was that?  
 14 A The S21F referenced a construction permit that I  
 15 referred to before where I got everyone confused.  
 16 And that was construction permit 90A-JMS-935.  
 17 Q I see you're referring to the document there.  
 18 Could you tell me which page you're on to help me  
 19 out.  
 20 A I'm on page 1 on the introduction. It's the first  
 21 paragraph and line three from the bottom.  
 22 Q I've got it.  
 23 So that references the current construction  
 24 permit with that numbering you just gave me,  
 25 right?

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1 A Correct.  
 2 Q At the point in time of this submission,  
 3 Plaintiff's 103, that permit referenced on page 1  
 4 was the one that was then in effect?  
 5 A We were operating under a construction permit as  
 6 well as our overall facility permit.  
 7 Q What's the difference between the construction  
 8 permit and the overall facilities permit?  
 9 A When you make modifications within your facility,  
 10 you submit a construction permit application, and  
 11 they specifically just look at in that permit  
 12 modification the construction revision that you're  
 13 making. Sometimes, based on the work that you do,  
 14 it may expire or you can ask to have it rolled  
 15 into your overall facility permit.  
 16 Q The overall facility permit -- is that also known  
 17 as the operation permit?  
 18 A Yes.  
 19 Q So if we refer back to Plaintiff's Exhibit 15,  
 20 that's titled "Operation Permit."  
 21 A Yes.  
 22 Q The operation permit could be modified by a  
 23 construction permit submission?  
 24 A Yes.  
 25 Q Is there ever anything issued by WDNR that's

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1 called a construction permit?  
 2 A Yes.  
 3 Q So could you have a construction permit in place  
 4 at the same time you have an operation permit?  
 5 A Yes.  
 6 Q So for Plaintiff's Exhibit 15 -- at any time while  
 7 it was in force, was there also a construction  
 8 permit in force?  
 9 A I don't recall when 98-JMS-935 -- when it was  
 10 rolled into. At the time of 2008, we were only  
 11 operating under one permit.  
 12 Q So for Plaintiff's Exhibit 103 -- when that was  
 13 submitted, the idea was that Plaintiff's 103 would  
 14 make revisions that would ultimately be included  
 15 in Plaintiff's 15?  
 16 A I believe so.  
 17 Q Were there other submissions other than  
 18 Plaintiff's 103 provided to WDNR that ultimately  
 19 fed into what became Plaintiff's 15?  
 20 A Again, I'm going to reference the construction  
 21 permit because they would have combined this  
 22 application --  
 23 Q This application being Plaintiff's 103?  
 24 A Correct. Construction permit 98-JMS-935 along  
 25 with permit number what I think would have been

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<p>1 154002970-P09 -- I believe that would have been</p> <p>2 the previous one.</p> <p>3 Q And you just referred to the top of Plaintiff's</p> <p>4 Exhibit 15. But, instead of the P10 at the end,</p> <p>5 it would have been P09?</p> <p>6 A Correct.</p> <p>7 Q As of any time in 2008, if I wanted to look up and</p> <p>8 see which permit was currently governing emissions</p> <p>9 at the FME facility, it would be Plaintiff's</p> <p>10 Exhibit 15, right?</p> <p>11 A That's correct.</p> <p>12 Q If I wanted to understand Plaintiff's Exhibit 15,</p> <p>13 would I need any additional information other than</p> <p>14 the permit itself?</p> <p>15 A You should not.</p> <p>16 Q Why is that?</p> <p>17 A Because this is our permit that's issued by</p> <p>18 Wisconsin DNR, and it states in there what are the</p> <p>19 compliance demonstrations that we need to meet in</p> <p>20 order to fulfill compliance demonstration for the</p> <p>21 permit.</p> <p>22 Q So a person investigating FME's status of its</p> <p>23 permit would look to Plaintiff's 15?</p> <p>24 A Correct.</p> <p>25 Q Would they need to look anywhere else?</p>	<p>1 removing it from within our permit under which we</p> <p>2 operate.</p> <p>3 Q So if I were to review this application back in</p> <p>4 2008, would I know whether or not the stacks in</p> <p>5 footnote 22 of Plaintiff's 15 had been removed</p> <p>6 from the modeling?</p> <p>7 A Can you repeat that one more time?</p> <p>8 Q Sure. The timeframe of my question is any time in</p> <p>9 2008.</p> <p>10 A Okay.</p> <p>11 Q If I were back in that time period and I pulled</p> <p>12 Plaintiff's Exhibit 103 --</p> <p>13 A Okay.</p> <p>14 Q -- and read it and saw on page 3 and this</p> <p>15 reference to these three indented bullet points,</p> <p>16 would that tell me one way or the other whether</p> <p>17 the stacks that are identified in footnote 22 of</p> <p>18 Plaintiff's Exhibit 15 had been removed from the</p> <p>19 modeling that was used for the permit?</p> <p>20 A It would have told you it was removed from the</p> <p>21 modeling. But, again, for me -- my compliance</p> <p>22 demonstration within the permit was based on fuel</p> <p>23 usage per building. It could be very confusing.</p> <p>24 Q What could be confusing?</p> <p>25 A For compliance demonstration purposes, I don't</p>
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<p>1 A No.</p> <p>2 Q If you return to Plaintiff's 103 and if you turn</p> <p>3 to page 3 -- again, take as much time as you need.</p> <p>4 My understanding of this section, 3.1 on page 3 --</p> <p>5 it describes to the WDNR the removal of the stacks</p> <p>6 that ultimately ended up in footnote 22 of</p> <p>7 Plaintiff's 15; is that correct? Again, take as</p> <p>8 much time as you need.</p> <p>9 A Can you point out where it says removal of the</p> <p>10 stacks?</p> <p>11 Q Well, it may not use the word "stacks." I don't</p> <p>12 mean to suggest that. What I want to understand,</p> <p>13 though, is in Section 3.1 -- I'm referencing</p> <p>14 mostly the three indented bullets.</p> <p>15 A Okay. Thank you.</p> <p>16 Q I see that it says the test stands identified as</p> <p>17 S21A, S21B, and S21C.</p> <p>18 A Yes.</p> <p>19 Q And S20C. Is that not the stacks that are</p> <p>20 referenced in footnote 22 of Plaintiff's 15? If</p> <p>21 it's not, tell me. I don't have an understanding.</p> <p>22 I just want to know.</p> <p>23 A It is, but this references removal of the test</p> <p>24 stands. In my mind, it doesn't talk about us</p> <p>25 having the need to remove the stacks. We are just</p>	<p>1 have to state what test stand I'm using nor what</p> <p>2 stack I'm using.</p> <p>3 Q But if a stack had been removed from modeling, any</p> <p>4 subsequent use of that stack would change the</p> <p>5 modeling, correct?</p> <p>6 A That's correct.</p> <p>7 Q Would you then be under an obligation with WDNR to</p> <p>8 go back and say "We told you before we weren't</p> <p>9 using it, but now we are using it so we need to</p> <p>10 change our modeling"?</p> <p>11 A We would be under obligation. Correct.</p> <p>12 Q At the time AVL started testing on any of these</p> <p>13 un-permitted stacks, to your knowledge did anyone</p> <p>14 approach WDNR and tell WDNR that the stacks were</p> <p>15 now in use and it therefore changed the modeling?</p> <p>16 A I don't recall.</p> <p>17 Q You were still in charge of environmental</p> <p>18 compliance at that time, right?</p> <p>19 A That's correct.</p> <p>20 Q Do you recall telling that to WDNR?</p> <p>21 A I did not.</p> <p>22 Q This is going to be tricky, I apologize, because</p> <p>23 we don't have page numbers here. What I want to</p> <p>24 refer to is Figure 2 of this submission. It</p> <p>25 follows the tables after the text. I can show it</p>

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<p>1 to you, what I'm looking at here. It's this page</p> <p>2 with Figure 2 with the layout.</p> <p>3 A Okay.</p> <p>4 Q This is titled "Figure 2: P20 through 21 stack</p> <p>5 layout."</p> <p>6 A Yes.</p> <p>7 Q This reference to P20-21 at the top -- would it be</p> <p>8 your understanding that that would include all</p> <p>9 stacks within that series including sub lettered</p> <p>10 stacks?</p> <p>11 A That's correct.</p> <p>12 Q If you look down on the diagram here, do any of</p> <p>13 the stacks appear that are listed in footnote 22</p> <p>14 of Plaintiff's 15?</p> <p>15 A They are not included.</p> <p>16 Q By submitting this Figure 2 along with</p> <p>17 Plaintiff's 103 to WDNR, was the intent to convey</p> <p>18 to WDNR that those stacks had been in fact</p> <p>19 removed?</p> <p>20 A It was to convey to them which stacks we planned</p> <p>21 to do future testing in and have emissions from.</p> <p>22 Q But not necessarily whether they had been removed?</p> <p>23 A Correct.</p> <p>24 Q I may have a blank page here. It's either one or</p> <p>25 two pages in. It starts "Facility Identification"</p>	<p>1 Q That was done with your approval, though, right?</p> <p>2 A Yes.</p> <p>3 Q So if you're a contact person on this -- you're</p> <p>4 clarification is a fair one. For anything</p> <p>5 involving Plaintiff's 103, do you recall WDNR ever</p> <p>6 reaching out to you personally on any issues?</p> <p>7 A I'm not explicitly sure because the construction</p> <p>8 permit before that -- the 98-JMS -- I had a lot of</p> <p>9 discussion with DNR. It was somewhat in the same</p> <p>10 timeframe. I want to say yes, but I'm unsure.</p> <p>11 Q That's okay. Just the best of your memory.</p> <p>12 Was it the norm for WDNR to reach out to you</p> <p>13 or would they first go to your consultant?</p> <p>14 A No. To me.</p> <p>15 Q And above the responsible official identifies</p> <p>16 Steve Mayse?</p> <p>17 A Yes.</p> <p>18 Q Who was Steve at this time?</p> <p>19 A He was the operations vice president.</p> <p>20 Q Did you report to him or was that a different</p> <p>21 connection?</p> <p>22 A I did not.</p> <p>23 Q Why was Steve Mayse considered the responsible</p> <p>24 official for purposes of this submission?</p> <p>25 A He was the person responsible for the test stands</p>
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<p>1 at the top.</p> <p>2 A Okay.</p> <p>3 Q It's got the facility name and mailing address.</p> <p>4 A Yes.</p> <p>5 Q What did that mailing address encompass? What</p> <p>6 buildings?</p> <p>7 A For our whole entire facility.</p> <p>8 Q Would that include both the OP building and the LE</p> <p>9 or large engine building?</p> <p>10 A That's correct.</p> <p>11 Q And the permit contact person I see is you.</p> <p>12 That's Julie Gilson, right?</p> <p>13 A That's correct.</p> <p>14 Q Was it a requirement that a contact person at the</p> <p>15 company be identified for this submittal?</p> <p>16 A It is.</p> <p>17 Q Did the WDNR ever reach out and contact you</p> <p>18 directly about any permitting issues?</p> <p>19 A While reviewing the application?</p> <p>20 Q That's a fair question.</p> <p>21 I know you had ERM as your consultant, right?</p> <p>22 A Yes.</p> <p>23 Q And for this exhibit I see that the consultant</p> <p>24 submitted this on FME's behalf, right?</p> <p>25 A Yes.</p>	<p>1 and overall operations for Fairbanks at that time.</p> <p>2 Q What was Steve's history? Is he still with the</p> <p>3 company?</p> <p>4 A He is not.</p> <p>5 Q When did he depart?</p> <p>6 A It would have been some time after 2005. I'm</p> <p>7 unsure.</p> <p>8 Q Could you give me your educational background,</p> <p>9 please. Take me from high school graduation to</p> <p>10 the present.</p> <p>11 A You're really taxing my memory today.</p> <p>12 Q I would have trouble with the same questions.</p> <p>13 Just do the best you can.</p> <p>14 A Okay. I received my bachelor's from</p> <p>15 U.W.-Platteville. I have a bachelor's of science</p> <p>16 in reclamation with an environmental earth science</p> <p>17 minor.</p> <p>18 Q I apologize for interrupting. Our court reporter</p> <p>19 has to take down everything that we say, so take</p> <p>20 your time. Just speak slowly. Take me back to</p> <p>21 your bachelor's.</p> <p>22 A I received my bachelor's of science from</p> <p>23 University of Wisconsin-Platteville. I have a</p> <p>24 reclamation degree with an environmental earth</p> <p>25 science minor. I've also achieved my --</p>

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<p>1 Q Let me interrupt you again and just ask for the 2 date that you graduated. Just the best you can. 3 A 1997. 4 Q Okay. I'm sorry. Continue. 5 A I also achieved my MBA from Cardinal Stritch 6 University in 2004. 7 Q Any other higher education? 8 A No. 9 Q At Cardinal, was that an on-campus experience or 10 different? 11 A Different. 12 Q How was that achieved? 13 A They have a two-year program with the satellite 14 office out of Beloit. The program is really fit 15 for working adults. You meet once a week for a 16 consecutive two-year period with no breaks to 17 achieve the program. 18 Q Was the MBA course of study a standard business 19 administration course? 20 A Yes. 21 Q Did you have any engineering or technical for the 22 MBA? 23 A I did not. 24 Q I'm not from this area, so I apologize. 25 U.W.-Platteville -- is that a satellite campus of</p>	<p>1 A Environmental earth science. 2 Q Is that related to reclamation in any way? 3 A It's very similar. 4 Q How is environmental earth science different from 5 reclamation? 6 A To be truthful, when I was looking that I only 7 needed two more classes to get a minor under my 8 major, I added those. 9 Q Fair enough. What were the two additional 10 classes? 11 A I don't recall. 12 Q For your formal course of study that you have 13 described, did you have any training in 14 environmental air compliance issues? 15 A I did not. 16 Q At any time have you had any classes or coursework 17 or otherwise that led you to some type of 18 professional license or certification? 19 A Yes. 20 Q What's that? 21 A I have my CHMM. 22 Q Which stands for? 23 A Certified hazardous materials manager. 24 Q When did you achieve that? 25 A I think it's around 2003.</p>
Page 54	Page 56
<p>1 U.W.? It's the University of Wisconsin we're 2 talking about, right? 3 A It is not a satellite campus. There are eight or 4 nine U.W. campuses across Wisconsin. 5 Q Is U.W.-Platteville a concentration of study in 6 any particular field? 7 A They are heavily known for their engineering 8 program. 9 Q More so than U.W. in general? 10 A Not necessarily. 11 Q Your major was reclamation, you said? 12 A Yes. 13 Q Could you give me a description of what that 14 entails. 15 A Reclaiming of the land; putting it back to its 16 natural state. 17 Q What particular science is involved in that course 18 of study? 19 A Several environmental courses. 20 Q Since it's focused on reclamation of the land, was 21 there any air -- 22 A There was not. 23 Q No air environmental issues for that, correct? 24 A Not that I recall. 25 Q And then you had a minor in environmental science?</p>	<p>1 I also have my PHR. 2 Q Which is? 3 A Professional human resources. I achieved that 4 maybe around 2011. That would be it. 5 Q Let me take a detour here and ask you this 6 question: Did you achieve these certifications 7 while you were employed? 8 A Correct. 9 Q Now let's forget education for a minute. Just 10 tell me your employment history taking me from 11 your college years forward. 12 A You should have told me to bring my résumé. 13 Immediately after college I was working for the 14 Department of Transportation doing surveying. 15 Q You say immediately after college. That's your 16 undergrad or BS, right? 17 A That's correct. Thank you. 18 Q So this would be roughly '97? 19 A Yes. 20 Q Go ahead. Continue. So Department of 21 Transportation -- 22 A Yes. 23 Q -- for the State of Wisconsin? 24 A Correct. 25 Q What were you doing for them?</p>

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1 A Survey work.  
2 Q Did that relate to your environmental --  
3 A No.  
4 Q Go ahead. Continue.  
5 A I was looking for full-time employment. The  
6 reason I was at the Department of  
7 Transportation -- I received an internship the  
8 summer prior. They still needed help. Once I  
9 received my degree, I worked for them while  
10 seeking full-time employment. About two months  
11 after that, so about July 1997, I found full-time  
12 employment with a small environmental company  
13 called Environmental Resource Management. No.  
14 Q Just do the best you can.  
15 A I apologize. That's terrible. I can't remember  
16 the company name.  
17 Q That's all right. We can move on if you don't  
18 have a recollection.  
19 A It was a small environmental consulting company  
20 that had a lot of concentration in underground  
21 tanks.  
22 Q Where was it located?  
23 A In Middleton, Wisconsin.  
24 I worked for them for a year and then  
25 received a job opportunity for Fairbanks Morse

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1 Engine in 1998.  
2 Q You accepted it?  
3 A I did.  
4 Q What did you hire on to do at first?  
5 A As an environmental engineer, the environmental  
6 compliance.  
7 Q Are those two different things or one in the same?  
8 A Which two?  
9 Q You said you hired on as an environmental  
10 engineer, environmental compliance.  
11 A I did environmental compliance as an environmental  
12 engineer.  
13 Q Thank you.  
14 Is environmental engineer a title or is it a  
15 profession that arose from your degree?  
16 A It was just a title because I'm not an engineer.  
17 Q Did you have any engineering courses in your  
18 formal education?  
19 A Yes.  
20 Q What did you take in general?  
21 A I'm not sure I remember. There were a few.  
22 Q Were they math and physics courses or were they  
23 specific engineering courses?  
24 A All of those. There was heavy concentration on  
25 chemistry, math, science, and there was some

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1 construction engineering courses.  
2 Q I think you told me this earlier, but from the  
3 time you hired on, you remained in that role as  
4 environmental engineer, compliance?  
5 A Correct.  
6 Q Then your CHMM and PHR designations were achieved  
7 while you were working at FME, right?  
8 A Correct.  
9 Q Is that a course of study the company funded for  
10 you?  
11 A They did.  
12 Q Are those certifications that you need to take any  
13 continuing education to sustain?  
14 A They are.  
15 Q What do you have to do for those?  
16 A There are certain classes that have specific  
17 continuing education credits under both programs  
18 that I believe -- I believe both of them you need  
19 roughly 20 hours a year for each to maintain your  
20 certification.  
21 Q Did you keep up with those for the entire time you  
22 were employed by FME?  
23 A Yes.  
24 Q Now, the PHR -- does that refer in any way to  
25 environmental issues?

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1 A No. None.  
2 Q Did you do any HR supervisory work at FME?  
3 A Yes.  
4 Q What did you do?  
5 A I was the HR manager.  
6 Q So you had your environmental compliance issues,  
7 but you also had HR duties?  
8 A Correct.  
9 Q What other duties did you have other than  
10 environmental compliance and HR at FME?  
11 A Security. I would oversee security, onsite  
12 security.  
13 Q Anything else?  
14 A No.  
15 Q Your PHR was achieved around 2011, right?  
16 A Correct.  
17 Q Did your HR duties only begin as of 2011, or had  
18 you been performing them longer?  
19 A I guess I was just trying to seek out future  
20 career opportunities, kind of that next step of  
21 what I wanted to do within my career. I worked  
22 within the HR department. I actually had a strong  
23 interest in recruiting. I enjoy talking with  
24 people and learning about their backgrounds and  
25 what they may have the ability to do. I

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<p>1 recognized that HR could be of interest to me. I</p> <p>2 started doing just recruiting within HR.</p> <p>3 Q When did you start doing the security function for</p> <p>4 FME?</p> <p>5 A I believe that was when I was promoted to the EHS</p> <p>6 manager in 2000. That was part of adding on both</p> <p>7 security and safety.</p> <p>8 Q What functions did you perform with respect to</p> <p>9 security?</p> <p>10 A Overseeing security guards at the gate. We had an</p> <p>11 external company that we used. For them to</p> <p>12 maintain a secure access and understand who is</p> <p>13 within the facility and when they leave; to</p> <p>14 maintain security logs.</p> <p>15 Q Did you have any involvement in security issues</p> <p>16 relative to AVL coming onboard and beginning to</p> <p>17 test in the facility?</p> <p>18 A Not directly. Again, I oversaw the program, but</p> <p>19 we had procedures as to when someone comes to the</p> <p>20 site and that security needs to call someone to</p> <p>21 authorize them to come onsite.</p> <p>22 Q I understand from others there were some physical</p> <p>23 modifications that were made to some facilities</p> <p>24 such as door locks for passkeys and so forth with</p> <p>25 respect to AVL. Did you have any involvement in</p>	<p>1 Q Who would put those on? Outside people or inside</p> <p>2 people?</p> <p>3 A It would be internal. Corporate and internal to</p> <p>4 the company.</p> <p>5 Q With respect to environmental compliance, were</p> <p>6 there people there who knew more about it than you</p> <p>7 such that they were teaching the course instead of</p> <p>8 you?</p> <p>9 A We worked with a company called ERC, Environmental</p> <p>10 Resource Center. The owner would usually come in,</p> <p>11 but his focus on communication was on waste.</p> <p>12 Q As opposed to permitting?</p> <p>13 A Correct. Hazardous waste.</p> <p>14 Q Your CHMM certification -- does that deal with air</p> <p>15 issues at all?</p> <p>16 A It does not.</p> <p>17 Q Did you have any interaction with the parent</p> <p>18 company, EnPro?</p> <p>19 A Yes.</p> <p>20 Q What did that consist of just generally? Did you</p> <p>21 report either formally or informally to people at</p> <p>22 EnPro?</p> <p>23 A There was no dotted line reporting, no.</p> <p>24 Q By dotted line you mean on an organizational</p> <p>25 chart --</p>
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<p>1 any of that?</p> <p>2 A My security officer would have completed that, but</p> <p>3 I didn't have direct involvement.</p> <p>4 Q Who was your security officer?</p> <p>5 A I believe it would have been Virginia Taylor as</p> <p>6 the security supervisor. I may be mistaken on the</p> <p>7 name of the person.</p> <p>8 Q Before AVL came onboard at the facility, did you</p> <p>9 personally do any reviews of the facilities with</p> <p>10 respect to security compliance now that AVL was</p> <p>11 coming in?</p> <p>12 A I did not.</p> <p>13 Q While at FME, did you receive any in-house</p> <p>14 coursework relative to environmental compliance</p> <p>15 issues? For example, an FME in-house seminar on</p> <p>16 environmental stuff.</p> <p>17 A There were several -- when I first started, I</p> <p>18 received a lot of guidance from Dave Dusing from</p> <p>19 ERM to bring me up to speed with knowing</p> <p>20 environmental compliance and the reports that were</p> <p>21 necessary. He did a lot of work with me where he</p> <p>22 would come to the facility, and then I would call</p> <p>23 him and ask him questions. There was also</p> <p>24 corporate EHS seminars that I would attend as</p> <p>25 well.</p>	<p>1 A Correct.</p> <p>2 Q -- you had at least some responsibility to report</p> <p>3 to EnPro?</p> <p>4 A Correct.</p> <p>5 Q That wasn't the case?</p> <p>6 A That not the case.</p> <p>7 Q For what reasons would you report to anyone at</p> <p>8 EnPro?</p> <p>9 A We would have internal compliance reporting that</p> <p>10 we would need to submit. Again, there was just a</p> <p>11 close relationship with the person at corporate if</p> <p>12 you needed any help or if you had any questions.</p> <p>13 Q Who did you interact with?</p> <p>14 A His name is Joe Wheatley.</p> <p>15 Q Did you interact with Joe during your entire</p> <p>16 tenure at FME or just for certain time periods?</p> <p>17 A The entire time.</p> <p>18 Q What position did Joe Wheatley have during that</p> <p>19 time?</p> <p>20 A I believe the title was something to the accord of</p> <p>21 EHS director. I'm not exactly sure.</p> <p>22 Q Did you rely on Joe at any time for any air</p> <p>23 permitting advice or input?</p> <p>24 A Up front, yes, and early on. He put me in contact</p> <p>25 with David Dusing.</p>

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<p>1 Q Up front early on. Can you give me a date range?</p> <p>2 A In like the 1999 timeframe when I first started.</p> <p>3 Q So after you got in touch with Dave Dusing -- from</p> <p>4 that point forward, did you have any interactions</p> <p>5 with Joe Wheatley relative to air permitting?</p> <p>6 A I don't recall specifically for air permitting.</p> <p>7 Q Other than Joe Wheatley, did you interact with</p> <p>8 anyone at EnPro for your official duties?</p> <p>9 A He was the main person.</p> <p>10 Q Do you have a recollection of FME settling an</p> <p>11 issue with the government relative to labeling of</p> <p>12 certain engines?</p> <p>13 A Vaguely.</p> <p>14 MR. DeGEORGE: This is the consent</p> <p>15 decree?</p> <p>16 MR. HERRMANN: Yes.</p> <p>17 Q You can put those aside for a moment.</p> <p>18 You have Plaintiff's Exhibit 2. The same</p> <p>19 rules apply. Take as much time as you need. The</p> <p>20 first question is whether you recognize this.</p> <p>21 A I do not recognize this.</p> <p>22 Q Aside from not recognizing this specific document,</p> <p>23 do you recall FME ultimately entering into a</p> <p>24 settlement agreement with the government about</p> <p>25 improper labeling of engines?</p>	<p>1 to as the SEP, Supplemental Environmental Program.</p> <p>2 Do you recall any reference to that? Project, I</p> <p>3 should say.</p> <p>4 A I'm familiar with SEPs. However, I don't really</p> <p>5 recall this one.</p> <p>6 Q Refer to page 11 of this exhibit, if you would.</p> <p>7 Just read paragraph 13 to yourself just to see if</p> <p>8 that gives you a reference point on your memory.</p> <p>9 A I don't recall this.</p> <p>10 Q Whether or not it was called a SEP, do you</p> <p>11 remember at any time aftertreatment processes</p> <p>12 being installed in connection with S21F in the OP</p> <p>13 building?</p> <p>14 A No. I don't recall.</p> <p>15 Q Do you remember discussions at any time about</p> <p>16 installing SCR aftertreatment on any of the stands</p> <p>17 in the OP building?</p> <p>18 A We had looked at it from a perspective knowing</p> <p>19 that there was going to be changes in regulations</p> <p>20 coming within air compliance, but it was just more</p> <p>21 of a strategy session of what do we need to know</p> <p>22 for any future reference.</p> <p>23 Q You don't recall that being connected to the SEP</p> <p>24 for this settlement?</p> <p>25 A No. I don't recall. Nor do I think it was</p>
Page 66	Page 68
<p>1 A Vaguely. I was in a different role by that time.</p> <p>2 I don't really remember.</p> <p>3 Q When you say "by that time," what timeframe are</p> <p>4 you remembering?</p> <p>5 A I'm looking at the 2012 timeframe.</p> <p>6 Q Do you have any understanding of when this issue</p> <p>7 first came to the attention of FME?</p> <p>8 A Now that's the part I remember.</p> <p>9 Q That's fair.</p> <p>10 A We had an inspector show up, and, of course -- as</p> <p>11 you know, I was in charge of security.</p> <p>12 Q Right.</p> <p>13 A It was an unannounced inspector that was here on</p> <p>14 behalf of the EPA unannounced.</p> <p>15 Q That was not a fun day, I assume.</p> <p>16 A It's just unusual. We had never gone through</p> <p>17 anything like that.</p> <p>18 Q I assume the focus of that inspection was this</p> <p>19 engine labeling issue?</p> <p>20 A Yes. But, again, I was not involved with the</p> <p>21 inspector.</p> <p>22 Q Do you remember the timeframe of that inspection?</p> <p>23 A I do not.</p> <p>24 Q There's a component of the ultimate settlement</p> <p>25 with the government that includes what is referred</p>	<p>1 connected.</p> <p>2 Q When did those discussions begin that you're</p> <p>3 recalling about changes in regulations and the</p> <p>4 need for aftertreatment?</p> <p>5 A When we submitted the 2009 air permit</p> <p>6 application -- at that time I believe it was</p> <p>7 required to submit a BACT evaluation.</p> <p>8 Q That's B-A-C-T?</p> <p>9 A Yes.</p> <p>10 Q What does that stand for?</p> <p>11 A Best Available Control Technology.</p> <p>12 Q Sorry to interrupt you. Could you just describe</p> <p>13 what that means.</p> <p>14 A I'll do the best I can with my memory.</p> <p>15 Q That's all right.</p> <p>16 A It is a protocol under the State that when you're</p> <p>17 looking at your air permit you need to evaluate it</p> <p>18 for BACT and make determinations. There are</p> <p>19 certain criteria. If it meets the criteria, you</p> <p>20 have to put BACT in place. If it does not meet</p> <p>21 the criteria, you would not need to put it in</p> <p>22 place.</p> <p>23 Q Is it fair to say that an example of BACT would be</p> <p>24 SCR aftertreatment?</p> <p>25 A That's correct.</p>

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1 Q What would another example be? Or is that pretty  
2 much it?  
3 A Well, there was one for particulate. I'm trying  
4 to think of the name. Those were the two that we  
5 had discussed. An SCR and maybe a diesel  
6 particulate filter or DPF.  
7 Q If either of those two BACT options had been  
8 implemented at some point in the OP building --  
9 let's take them one by one. How would an SCR  
10 system actually be put in place? Is it applied to  
11 the stands? To the engine? To the stacks? How  
12 is it physically implemented?  
13 A It would be somewhere in your exhaust stream. You  
14 could put it on your engine or you could put it on  
15 your stack, but you would want to evaluate -- if  
16 you were to sell an engine where it was included,  
17 you would keep it with the engine. If you were  
18 only required to test with it, you would put it in  
19 your stack so you could swap your engines out and  
20 not have to replace your control mechanism.  
21 Q As of the 2009 permit application, what  
22 implementation of SCR, if any, was being  
23 considered by FME?  
24 A There was none at the time.  
25 Q Why is that?

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1 A When we did a BACT review, there weren't many  
2 facilities in the United States that had  
3 successfully used them, so this technology was  
4 still fairly early on. There's another category  
5 that you want to evaluate or they will take a look  
6 at what your cost is to see if it's cost feasible  
7 or not. So technically feasible and cost feasible  
8 are the two factors I recall.  
9 Q Is cost feasibility a factor that the government  
10 looks at to decide whether or not to make you do  
11 it?  
12 A That's correct.  
13 Q So what do you do in that instance? I assume from  
14 the company's perspective the best deal would be  
15 to show that it's cost prohibitive so you don't  
16 have to do it, right?  
17 A Well, you have to use the data and let the numbers  
18 make that determination for you.  
19 Q I'm not suggesting anything nefarious. I know you  
20 would give true information.  
21 A Yes.  
22 Q My point is it's to the company's advantage if the  
23 cost is above the government's threshold, right?  
24 A Absolutely.  
25 Q So as of the 2009 air permit application, SCR was

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1 not considered?  
2 A I would want to refer to the documentation in my  
3 notes. I believe it was considered under BACT and  
4 found to not be technically nor cost feasible.  
5 Q Do you recall why it would not be technically  
6 feasible?  
7 A I think it was the back pressure issue on the  
8 engines.  
9 Q And what engines are we referring to here?  
10 A It would have been the engines that we submitted  
11 in the application that would have been known on  
12 those test stands.  
13 Q Did that include AVL and FME engines?  
14 A Yes.  
15 Q You also mentioned diesel particulate filters.  
16 A Yes.  
17 Q That's another example of BACT?  
18 A Yes.  
19 Q Did DPF relate in any way to the 2009 air permit?  
20 A I don't believe so. If it did, it would have been  
21 under the same philosophy as an SCR.  
22 Q So when the 2009 air permit was submitted, do I  
23 understand correctly that it did not include a  
24 BACT component at all to the best of your memory?  
25 A Again, we need to check the records. It came up

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1 in conversation. If we didn't submit it, it was  
2 definitely flagged by the DNR. But I think we  
3 submitted it and had additional conversations with  
4 them on it.  
5 Q Why would it be flagged by DNR? Because DNR  
6 expected to see it?  
7 A Correct.  
8 Q Why would DNR expect to see it?  
9 A It's part of their review process. There are  
10 certain things they need to review to ensure that  
11 the permit application is deemed complete, and  
12 they check to make sure that they have everything  
13 as appropriate.  
14 Q When you submit the permit application, you need  
15 to address the BACT analysis issue. You don't  
16 necessarily have to tell the government that  
17 you're going to install it, right? You have to do  
18 the BACT analysis, right?  
19 A You do. To the best of my knowledge, because we  
20 submitted it with not being cost and technically  
21 feasible, we didn't take that any further. But if  
22 you would meet those requirements, I believe you  
23 would submit saying you were going to install  
24 those.  
25 Q You mentioned you got some feedback from WDNR

<p style="text-align: right;">Page 73</p> <p>1 about BACT.</p> <p>2 A We had quite a bit of conversation on it. Yes.</p> <p>3 Q Because WDNR didn't feel you gave them enough</p> <p>4 analysis of the issue?</p> <p>5 A If memory serves me right, which is bad, they had</p> <p>6 a lot of questions about the technical feasibility</p> <p>7 as to maybe they didn't necessarily agree with the</p> <p>8 submittal.</p> <p>9 Q How was that BACT feedback from WDNR ultimately</p> <p>10 resolved?</p> <p>11 A It never was because the construction permit</p> <p>12 application for those four AVL engines -- it ended</p> <p>13 up that AVL wasn't testing on those four test</p> <p>14 stands, so there was lots of changes.</p> <p>15 Q When did it end up that AVL was not testing on</p> <p>16 those four stands?</p> <p>17 A When we started to have these discussions in 2011.</p> <p>18 It would have been then identified by me that they</p> <p>19 are on test stands that weren't in that permit</p> <p>20 application.</p> <p>21 Q And then what was the interplay between your</p> <p>22 learning that some of the AVL engines were on test</p> <p>23 stands that weren't in the permit application and</p> <p>24 the status of the still then-pending construction</p> <p>25 application?</p>	<p style="text-align: right;">Page 75</p> <p>1 from your facility. There are different</p> <p>2 requirements that you have to consider. That's</p> <p>3 what we tried to do with the 2009 construction air</p> <p>4 permit application.</p> <p>5 Q So was your position then to WDNR "We don't think</p> <p>6 we're going to hit that additional emissions zone</p> <p>7 and therefore we don't need to do BACT"?</p> <p>8 A No. The position was -- we actually approached it</p> <p>9 from a different philosophy. We wanted to work</p> <p>10 with AVL understanding that they would have</p> <p>11 additional work. You model to try to understand</p> <p>12 what number you need, how much fuel, what</p> <p>13 limitation you need to take in order to stay below</p> <p>14 the emission threshold. It's called PSD,</p> <p>15 prevention of significant deterioration.</p> <p>16 Q That's the threshold number?</p> <p>17 A I believe it's 50 ton. If you plan to emit more</p> <p>18 than 50 ton of emissions from where you were</p> <p>19 originally at --</p> <p>20 Q Then you need to have BACT?</p> <p>21 A There's an additional trigger point. Yes.</p> <p>22 Q So the permit application remains pending up into</p> <p>23 2011, right?</p> <p>24 A Correct.</p> <p>25 Q Then there came a time where you learned that AVL</p>
<p style="text-align: right;">Page 74</p> <p>1 A Can you repeat that one more time for me?</p> <p>2 Q Sure. What I would like to understand is you had</p> <p>3 this 2009 application that you put in --</p> <p>4 A Yes.</p> <p>5 Q -- the construction permit application -- it</p> <p>6 included analysis based on four AVL engines being</p> <p>7 on four test stands, correct?</p> <p>8 A Correct.</p> <p>9 Q So that permit application went forward. You had</p> <p>10 some feedback and interaction on the BACT issues,</p> <p>11 right?</p> <p>12 A Yes. Can I --</p> <p>13 Q Go ahead.</p> <p>14 A I believe that the only reason that you need to</p> <p>15 look at BACT is if you go over a certain</p> <p>16 threshold. If you're requesting additional</p> <p>17 emissions -- maybe you can help remind me of the</p> <p>18 terminology -- that's what triggers BACT. So</p> <p>19 that's important for me to point out. I did not</p> <p>20 state that.</p> <p>21 Q Additional emissions above and beyond what?</p> <p>22 A I think of where we were currently at. So I</p> <p>23 believe the trigger was an additional -- I'm going</p> <p>24 to say 50 ton as an example. There's an</p> <p>25 additional amount that you're requesting to emit</p>	<p style="text-align: right;">Page 76</p> <p>1 engines were being tested on non-permitted stacks,</p> <p>2 right?</p> <p>3 A Correct.</p> <p>4 Q So was that discovery a triggering event, if you</p> <p>5 will, for something that was then done with the</p> <p>6 permit application?</p> <p>7 A Not with the permit application. We had discussed</p> <p>8 it, and that's where it was brought up from</p> <p>9 Mark Thimke, the environmental attorney, that a</p> <p>10 footnote doesn't designate compliance. So then it</p> <p>11 became unclear to me if there was an issue or not.</p> <p>12 Q Mr. Thimke brought that up, and it became unclear</p> <p>13 to you. What was the WDNR's position ultimately</p> <p>14 on that issue?</p> <p>15 A It was very clear that the DNR's position was you</p> <p>16 were not to test and have emissions from stacks</p> <p>17 that were not included with the modeling.</p> <p>18 Q Given that it was unclear at that point, did you</p> <p>19 on behalf of FME argue to WDNR that you agreed</p> <p>20 with Mr. Thimke and it should be allowed?</p> <p>21 A At that point we did not. We had a meeting with</p> <p>22 the DNR. AVL was in participation during that</p> <p>23 meeting. It became clear to me in that meeting of</p> <p>24 DNR's interpretation of the footnote, so what I</p> <p>25 did at that point in time was I received input</p>

<p style="text-align: right;">Page 77</p> <p>1 from legal counsel on behalf of EnPro to clearly</p> <p>2 understand what I needed to do.</p> <p>3 Q Don't tell me what you talked to legal counsel</p> <p>4 about. Tell me about WDNR's interpretation. Was</p> <p>5 it an interpretation of footnote 22 in the permit?</p> <p>6 A It wasn't that they pointed out the footnote. The</p> <p>7 words that I recall being said in that meeting</p> <p>8 were from the DNR that you better not be testing</p> <p>9 from stacks that aren't included within the</p> <p>10 modeling.</p> <p>11 Q So that meeting with DNR where you received the</p> <p>12 interpretation -- it wasn't really an</p> <p>13 interpretation of footnote 22, right?</p> <p>14 A No.</p> <p>15 Q Was footnote 22 called to the WDNR's attention at</p> <p>16 that meeting at all?</p> <p>17 A It was not.</p> <p>18 Q Who, to your knowledge, was the first person to</p> <p>19 identify the AVL testing of engines through the</p> <p>20 stacks that were not included in the permit?</p> <p>21 A I don't recall.</p> <p>22 Q I appreciate someone may have told them outside</p> <p>23 your presence. That's fine.</p> <p>24 A Yes.</p> <p>25 Q Do you know who it was?</p>	<p style="text-align: right;">Page 79</p> <p>1 A No one did.</p> <p>2 Q You seem certain of that. Do you know why you</p> <p>3 know that?</p> <p>4 A Because I would have been the point person to talk</p> <p>5 with the WDNR.</p> <p>6 Q And you were the contact person under the permit</p> <p>7 then, right?</p> <p>8 A That's correct.</p> <p>9 Q And nobody from WDNR prior to that meeting had</p> <p>10 contacted you about the issue of AVL testing</p> <p>11 through un-permitted stacks, right?</p> <p>12 A That's correct.</p> <p>13 Q Do you know if it was an AVL representative who</p> <p>14 first called it to WDNR's attention?</p> <p>15 A If memory serves me, I think the first time that</p> <p>16 it was told to DNR was the notification call that</p> <p>17 I made to our WDNR compliance person,</p> <p>18 Brian Barbieur, and that would have been a day</p> <p>19 after the meeting with the DNR.</p> <p>20 Q In talking with Brian Barbieur, did he express to</p> <p>21 you any reaction when you told him this was going</p> <p>22 on?</p> <p>23 A I was just stating the facts with him. I didn't</p> <p>24 anticipate any type of reaction. At that point in</p> <p>25 time I told him on the phone -- because, of</p>
<p style="text-align: right;">Page 78</p> <p>1 A I do not.</p> <p>2 Q To the extent you know, was that meeting you're</p> <p>3 describing the first time it came to WDNR's</p> <p>4 attention that those stacks might be being used by</p> <p>5 AVL?</p> <p>6 A Could say that one more time, please?</p> <p>7 Q Sure. To the best of your memory, that meeting</p> <p>8 with WDNR you have described where both FME and</p> <p>9 AFL people were present -- was that the first time</p> <p>10 that the issue of these un-permitted stacks being</p> <p>11 used by AVL came to WDNR's attention?</p> <p>12 A I'm not sure we explicitly said in that meeting</p> <p>13 that we had engines on the test stand.</p> <p>14 Q Do you recall when this meeting was?</p> <p>15 A There's a lot of notes on that meeting.</p> <p>16 Q We may get there today. I'm just asking for your</p> <p>17 best memory.</p> <p>18 A Likely June 2011.</p> <p>19 Q Prior to that meeting with both FME and AVL at</p> <p>20 WDNR, did you notify WDNR that AVL was testing</p> <p>21 through stacks that were not in the permit?</p> <p>22 A I did not.</p> <p>23 Q Sitting here today, are you aware of anyone at FME</p> <p>24 having notified WDNR prior to that meeting of the</p> <p>25 AVL stacks?</p>	<p style="text-align: right;">Page 80</p> <p>1 course, they need to know what the issue is and</p> <p>2 what you're going to do to fix the issue. We had</p> <p>3 asked AVL to stop testing those engines. Then I</p> <p>4 was required to submit a deviation report to the</p> <p>5 DNR. I believe that was within seven days.</p> <p>6 Q So that call with Brian Barbieur a couple days</p> <p>7 after the joint meeting with AVL and WDNR -- is</p> <p>8 that the first time that WDNR directed you to stop</p> <p>9 testing?</p> <p>10 A No one directed us to stop testing.</p> <p>11 Q What did he tell you?</p> <p>12 A We had made that determination internally, that we</p> <p>13 were not within compliance, so we made the call</p> <p>14 and requested AVL to stop testing. Then we</p> <p>15 reported it to the DNR.</p> <p>16 Q But your first report to WDNR was the phone call</p> <p>17 you had with Brian Barbieur a couple days after</p> <p>18 the meeting with AVL and WDNR, right?</p> <p>19 A Correct. And I believe he participated in that</p> <p>20 meeting by phone, so he was aware of the meeting.</p> <p>21 Q All I'm trying to understand here is -- when we</p> <p>22 had the meeting with AVL, FME, and WDNR sometime</p> <p>23 in June --</p> <p>24 A Yes.</p> <p>25 Q Brian Barbieur participated in that meeting by</p>

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1 phone?

2 A Yes.

3 Q And someone from WDNR said "You had better not be

4 testing through these stacks that aren't in the

5 permit."

6 A Correct.

7 Q Was that Brian Barbieur?

8 A It was not. It was our permit writer, Don Faith.

9 Q What brought Don Faith to the point of at that

10 meeting even raising that issue?

11 A We were discussing alternatives. We came to the

12 meeting with here are some things we would like to

13 discuss with you. Do you see any of these as

14 viable options. Through those discussions he made

15 that statement.

16 Q Is that because one of the options you had

17 presented to him included specifically showing him

18 that there might be testing through the

19 un-permitted stacks?

20 A I don't believe so.

21 Q What was your understanding then of why there

22 would even be concern by WDNR about testing

23 through the un-permitted stacks?

24 A Don Faith was very familiar with the modeling and

25 which stacks because he was the one originally

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1 assigned to the 2009 construction air permit. So

2 he had a very good understanding with the

3 background work that he had been working on for

4 years.

5 Q So he knew that those stacks under discussion here

6 had been removed from the modeling?

7 A Correct.

8 Q So that's the basis of his understanding of the

9 permit, but what, to your knowledge, connected

10 that issue to what the group, whether it was AVL

11 or FME, was then proposing to WDNR? In other

12 words, was there something about your proposal

13 that involved these stacks such that he would say

14 "Wait a minute. That wasn't included under the

15 prior permit"?

16 A No. It was something that he pointed out. You

17 could tell he felt very adamant during that

18 meeting about this. It wasn't like we brought in

19 any type of drawing or specifically talked about

20 certain test stands. It was just alternatives,

21 and he brought it up during that discussion.

22 Q And then after that meeting FME internally,

23 without AVL, determined that what was going on was

24 in violation of the permit?

25 A Yes.

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1 Q And was that determination made before or after

2 Mr. Thimke commented that he didn't feel the

3 footnote precluded using the stacks?

4 A That determination was made after.

5 Q So regardless of what Mr. Thimke felt or said, it

6 was FME's separate independent conclusion that it

7 was a violation, correct?

8 A That's correct.

9 Q And then at that point you contacted Mr. Barbieur

10 by phone?

11 A Yes.

12 Q And you reported to him the use of the stacks?

13 A Yes.

14 Q And he did not tell you to stop testing through

15 those stacks?

16 A We had already stopped by then. The meeting was

17 on a Wednesday, I believe. By Thursday we

18 recognized there may be an issue. While we

19 resolve this, AVL, you need to stop testing.

20 Q Did AVL stop testing?

21 A They were told, and I believe they still tested

22 for another day.

23 Q Do you know for sure?

24 A I'm pretty confident they continued to test.

25 Q How do you know that?

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1 A I learned of that from Pete DiCaro.

2 Q When did you learn that from Pete DiCaro?

3 A The day of. The day of this discussion.

4 Q So whatever Mr. DiCaro remembers or said about

5 that issue, you would trust his memory of what

6 happened?

7 A Maybe.

8 Q Did you have any independent knowledge of whether

9 AVL continued to test after you told it to stop?

10 A Yes. It was based on their fuel use records.

11 That's how I could verify that it indeed did

12 happen.

13 Q What are the fuel use records?

14 A Those are records that we're required to keep.

15 It's compliance demonstration for our air permit.

16 Q And those records were detailed enough to show

17 exactly what engines were run at exactly what

18 times?

19 A Yes. AVL had a system for each of their engines

20 to identify this information.

21 Q Would you know what time of day an engine was or

22 was not running?

23 A The record may have been for the day. It may not

24 have been time specific. I would need to look at

25 the records to be sure.

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1 Q But by the time you called Mr. Barbieur to  
2 report -- all testing had stopped at that time?  
3 A That I'm unsure of, the sequence of events. I  
4 know when I called him, I felt confident that  
5 conversations were taking place. AVL was  
6 instructed not to start up that day.  
7 Q When AVL was given that instruction, was that the  
8 first time FME notified AVL of FME's decision that  
9 it was not in compliance and therefore AVL needed  
10 to stop testing?  
11 A Yes.  
12 Q Prior to that date, no one had mentioned to AVL  
13 that they needed to stop testing on those  
14 un-permitted stacks?  
15 A No, because there was a little bit of  
16 interpretation about the footnote.  
17 Q I'm sorry. I'm not sure I follow you. Who was  
18 doing the interpretation?  
19 A Again, we were having open discussions with AVL.  
20 I was having the discussion with Mark Thimke.  
21 Q Right. But you had said after discussions with  
22 Mark Thimke then FME had an internal meeting,  
23 right?  
24 A We had an internal meeting the day after the  
25 meeting with the DNR.

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1 Q Mr. Thimke wasn't involved in that?  
2 A No. Not that next day.  
3 Q And that next day was purely FME, right? AVL  
4 wasn't involved?  
5 A That's correct.  
6 Q At that meeting FME came to its own independent  
7 conclusion that testing through those stacks was  
8 not covered under the permit.  
9 A Correct.  
10 Q Regardless of anything Mr. Thimke may have said?  
11 A Yes.  
12 Q And then the first notice to AVL of FME's  
13 determination that it was a violation was when you  
14 went to AVL and told them to stop testing, right?  
15 A Correct. I did not do that.  
16 Q Where did it start at FME? Who made the decision  
17 to tell AVL to stop testing?  
18 A I believe Pete DiCaro did.  
19 Q And you believe Pete was the same person who told  
20 them to stop testing?  
21 A Yes. For that day.  
22 MR. HERRMANN: Would you like to  
23 take a break?  
24 THE WITNESS: I would.  
25 (Recess)

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1 MR. HERRMANN: This is Exhibit 74,  
2 Steve.  
3 Q You have Plaintiff's Exhibit 74, your e-mail to  
4 John Bottorff of September 22, 2011. Again, feel  
5 free to review it. Do you recall this e-mail?  
6 A I do not recall this e-mail.  
7 Q In reviewing it today, does it refresh your memory  
8 at all about any interplay you may have had with  
9 the SEP?  
10 A It does not.  
11 Q Who is Mike Zebell, Z-e-b-e-l-l?  
12 A I think it's pronounced Zebell. He was with ERM.  
13 Q Is Mike someone at ERM you normally interacted  
14 with?  
15 A Not very frequently.  
16 Q And you don't recall asking Mike to do any workup  
17 for the SEP?  
18 A I'm sorry. I do not recall.  
19 Q Does it refresh your memory at all as to when the  
20 SEP was first discussed at FME?  
21 A I'm just able to tell that it was in the September  
22 2011 timeframe from my e-mail. But I don't  
23 recall.  
24 Q Did you come to learn that at some point AVL and  
25 FME had entered into a written contract?

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1 A Yes. At some point.  
2 Q Did you personally have any role in negotiating  
3 the terms of that written contract?  
4 A I did not.  
5 Q Do you ever recall discussing internally with  
6 anyone on the FME team about provisions that would  
7 or would not be included in the contract with AVL?  
8 A I did not.  
9 Q Did you ever personally have any discussions with  
10 any representative of AVL relative to provisions  
11 of the contract?  
12 A I did not.  
13 Q When was the first time you saw the contract  
14 between AVL and FME?  
15 A I'm not sure I've ever seen the contract.  
16 Q You don't recall at any time after its execution  
17 having any occasion to review it?  
18 A The only thing I recall is when the issue with the  
19 test stands -- taking a look at it in 2011.  
20 That's the best recollection I know.  
21 Q And the issue with the test stands you're  
22 referring to now is what we discussed earlier?  
23 A Correct. It would be within the OP building and  
24 what to do since we were encroaching on the fuel  
25 use limitation.

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<p>1 Q And you recall that you looked at the written 2 contract at that time? 3 A I'm not sure I ever saw a copy of the contract. 4 MR. HERRMANN: This is 5 Plaintiff's 13, Steve. 6 MR. DeGEORGE: Okay. 7 Q You have Plaintiff's Exhibit 13 previously marked. 8 Does that refresh your memory as to whether you 9 have ever seen this document before? 10 A I have never seen this document. 11 Q Let me call that back just because there's an 12 official copy of this that you should look at. 13 There you go. 14 A Thank you. 15 Q You have Plaintiff's 13, and you don't recall 16 seeing that before? 17 A The only thing I remember is Appendix C. I don't 18 know if I just saw maybe one page of the contract 19 before. 20 Q Do you recall personally contributing in any way 21 to the contents of Appendix C? 22 A I did not. 23 Q Do you recall in what context you saw it? 24 A I just remember the test stand charge number, 25 knowing that number. But, again, I don't recall</p>	<p>1 A I do not. I'm sorry. 2 Q That's all right. 3 You have Plaintiff's Exhibit 95. Take your 4 time to review it. My first question is whether 5 you recall it. 6 A Okay. 7 Q Do you recall the e-mail? 8 A No. 9 Q Who is Kevin Lidbury in the "to" line? 10 A Kevin was an employee of Fairbanks. I believe at 11 that time he was in sales. 12 Q And Mark Wester? 13 A He was an FME employee. He was a vice president. 14 I'm thinking of what department. I think it was 15 operations. I may be mistaken on that, though. 16 MR. DeGEORGE: If I can just say 17 something on the record. I'm not sure, Fred, 18 if this is the same document we talked about 19 the other day that John Mayo was copied on 20 that I didn't have any problem with you using 21 as long as it's not going to be used to argue 22 a broader waiver of the attorney-client 23 privilege. 24 MR. HERRMANN: Let's go off the 25 record for a minute.</p>
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<p>1 ever seeing the contract. 2 Q By the way, Ms. Mosley, as we go here, you can 3 kind of stack those exhibits out of your way. You 4 don't have to keep them all -- 5 A Sounds good. 6 Q -- sprayed out all over. We may return to some 7 later, but, for the most part, once we look at 8 them, we will move on. 9 (Exhibit No. 104 marked for 10 identification) 11 Q You have Plaintiff's Exhibit 104. Do you recall 12 this e-mail of January 24, 2008? 13 A I don't specifically recall this e-mail. 14 Q What was the extent of your interaction with 15 Mike Golda? 16 A It was very minimal. 17 Q From your prior responses, I assume you had no 18 discussions with him about contract terms between 19 AVL and FME? 20 A That's correct. No discussions. 21 Q Here he is forwarding some fuel specs. Do you 22 recall what that related to? 23 A I do not. 24 Q How about the max consumption rate of 43,000 25 gallons per month? Do you recall that?</p>	<p>1 (Discussion off the record) 2 MR. HERRMANN: Back on the record. 3 In discussion with counsel on a break, 4 an issue was raised by counsel for FME that 5 this document might be subject to privilege. 6 I'll state for the record that AVL will not 7 use this document in any sense in support of 8 any argument that there has been a waiver of 9 attorney-client privilege in whole or in part 10 in this case. 11 Q In the first line of this e-mail, Ms. Mosley, you 12 reference conversations with Joe Eves this 13 afternoon. Do you recall what those conversations 14 were? 15 A I don't recall those conversations. I can only 16 infer from what I have in writing. 17 Q There's a reference to ultra low sulfur diesel 18 fuel and that AVL is already using it. Do you 19 remember that issue coming up? 20 A Not specifically. I don't remember. 21 Q So you don't recall why it would have been great 22 news at that time? 23 A To the best of my recollection, there was a change 24 coming from the State of Wisconsin as to the type 25 of fuel that could be used for diesel engines for</p>

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<p>1 testing. We needed to use ultra low sulfur diesel 2 within our facility. There were some contracts 3 that I knew that would be difficult because -- the 4 basis for those engines where they're used -- they 5 don't have the opportunity to run on ultra low 6 sulfur diesel. So I knew some of our contracts 7 may have a different stipulation as to how they 8 were tested. 9 Q Did the use of anything other than ultra low 10 sulfur diesel fuel ever become a problem going 11 forward with respect to AVL testing? 12 A No. I think because they were already using ultra 13 low sulfur diesel there wasn't any other issues. 14 Q In the fourth paragraph of your e-mail beginning 15 "On a separate note" -- do you see that paragraph? 16 A I do. 17 Q You're informing everyone in this distribution 18 group here about FME's stringent fuel usage 19 limitations in the OP building, right? 20 A Yes. 21 Q At that time there was a 30,000 gallon rolling 22 12-month average? 23 A Yes. 24 Q If you go down to the last paragraph before 25 "Thanks," you're advising everyone here to please</p>	<p>1 1, 2, 3, 4 -- you say "If there's a need to 2 increase the limits" -- you list those four steps 3 that would need to be taken? 4 A Yes. 5 Q Did you know at the time you wrote this whether 6 the limit would need to be increased? 7 A I did not. 8 Q After you sent this, did anyone at FME get back to 9 you and say "We will in fact need to increase the 10 limit"? 11 A I wouldn't recall that. 12 Q The last item, Number 4, "Submit construction 13 permit application to WDNR," is that the 14 construction permit application that ultimately 15 went in in 2009? 16 A I believe so, and I think it went in in 2008. 17 Q You think that's when it was first submitted? 18 A Correct. 19 MR. HERRMANN: 164. 20 (Exhibit No. 105 marked for 21 identification) 22 Q You have Plaintiff's Exhibit 105. Take a look. 23 Let me know if you recall that document. 24 MR. DeGEORGE: If I can just say -- 25 you may already know this, Fred, but I</p>
Page 94	Page 96
<p>1 keep all of these timeframes and costs in mind as 2 we move forward with AVL and other customer 3 negotiations. 4 A Yes. 5 Q Do you recall what the other customer negotiations 6 were? 7 A I would not remember that. 8 Q Do you believe that going forward from this point 9 the other people at FME who you advised of this 10 issue -- do you believe they kept it in mind going 11 forward with respect to AVL? 12 A Are you specifically referring to the type of 13 fuel? 14 Q No. Your admonition in your last paragraph here 15 which refers to your previous paragraph and the 16 fuel burn limits and what would need to be done to 17 increase them. 18 A I guess I wouldn't be able to answer that on their 19 behalf. 20 Q Did there come a time where you believed that they 21 were allowing things to happen in the OP building 22 that would indicate they didn't keep this early 23 warning of yours in mind? 24 A No. I would not believe that. 25 Q Now, going back to the paragraph with the numbers</p>	<p>1 believe this letter is misdated. I think 2 it's supposed to be 2009. I'm not 3 100 percent certain of that. 4 MR. HERRMANN: I can't say either. 5 A When I first looked at this document, the date 6 didn't make sense in my mind with when we 7 submitted the application. 8 Q Okay. Just tell me what you remember. 9 A Can you tell me what date we submitted the 10 application to WDNR? 11 Q No. 12 A Okay. 13 Q You don't recall when that was? 14 A No. It's either 2008 or 2009. I was just trying 15 to line up -- 16 Q There's no mystery about that. I do have some 17 other documents we're going to discuss today that 18 might refresh your memory about when. I don't 19 have that date in my head, so I can't guide you on 20 that right now. 21 A Okay. 22 Q Just do the best you can. 23 Do you remember this? You just think the 24 date might be off? 25 A I don't really remember it.</p>

<p style="text-align: right;">Page 97</p> <p>1 Q Did FME have any permit applications pending as of 2 February 19, 2008? 3 A I don't recall. 4 (Exhibit No. 106 marked for 5 identification) 6 Q You have Plaintiff's Exhibit 106. Review it, 7 please, and tell me if you recall this e-mail 8 chain. 9 MR. DeGEORGE: I thought we marked 10 this yesterday. Maybe not. 11 MR. HERRMANN: Did we mark 64? I'm 12 not suggesting we didn't. I don't have the 13 form. It's not the last time that's going to 14 happen if we did. 15 MS. BROWN: We didn't. 16 MR. HERRMANN: I do recall 17 discussing some of these e-mails. 18 MR. DeGEORGE: Might have been just 19 a different chain. 20 MR. HERRMANN: Yes. 21 Q Do you recall seeing it, Ms. Mosley? 22 A I don't recall. 23 Q In the first e-mail in time, which appears on the 24 second page, you and others were recipients of an 25 e-mail from Joe Eves.</p>	<p style="text-align: right;">Page 99</p> <p>1 Q And what would you have looked at, what records, 2 to do that? 3 A A spreadsheet that I kept to maintain compliance. 4 A fuel tracking spreadsheet. 5 Q When did you first start keeping that spreadsheet? 6 A It would have been for compliance requirements. 7 I'm not sure. 8 Q Was it the entire time you were at FME? 9 A Yes. It was developed some time after I started. 10 Q Prior to the spreadsheet being developed, was 11 there another way that you collected fuel burn 12 information? 13 A No. I obtained it from maintenance based on what 14 the meters, fuel meters, stated every month, and 15 then I placed it on the spreadsheet. 16 Q Did you personally go out and do any fuel meter 17 readings? 18 A I did not. 19 Q Who in maintenance would provide them to you? 20 A I believe it was Cal Kooyenga. 21 Q And in what form did Cal provide that information 22 to you? 23 A In an e-mail. 24 Q Is that how he always did it, via e-mail? 25 A Yes.</p>
<p style="text-align: right;">Page 98</p> <p>1 A That is correct. 2 Q He describes a 2000-hour around the clock test in 3 June with total test fuel consumption estimated at 4 255,000 gallons. Do you recall that issue being 5 discussed? 6 A I don't recall. 7 Q In the next paragraph he says "We may have two or 8 three test beds up and running fairly quick." Do 9 you remember discussing that? 10 A I don't remember. 11 Q Now go to your next e-mail in the chain which is 12 the bottom of the first page. It's from you to 13 Joe Eves and others. Do you see that? 14 A Yes. 15 Q And you state "Max fuel usage in the OP for the 16 month of June would be 185,000 gallons." Do you 17 see that? 18 A Yes. 19 Q Why is that number so high if it was a 30,000 20 rolling average? 21 A Because it's precisely that. It's a rolling 22 12-month average. I would have taken a lookback 23 period for what the whole timeframe of fuel usage 24 would have been to see what could run the month of 25 June.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q Did he fill out a spreadsheet and forward the 2 spreadsheet to you, or did he just send you an 3 e-mail that contained the fuel burn data? 4 A I think he referred to it as a utility record with 5 many things listed on it each month. He would 6 forward that information, and I would pull it off 7 of his monthly utility record. 8 Q And the utility record was what? Was it a Word 9 document that was attached to an e-mail? 10 A Yes. It would have been in either Word or Excel. 11 I'm not sure. 12 Q Was that information provided to you in that 13 fashion by Cal the entire time you were at FME? 14 A Cal Kooyenga retired, so it may not have always 15 been him. 16 Q After Cal retired, did someone still continue to 17 do that? 18 A Yes. 19 Q And you still continued to receive from Cal's 20 replacement this record in either Excel or Word 21 form via e-mail? 22 A That's correct. 23 Q Was that the sole source of information provided 24 to you for your purpose in reporting fuel usage to 25 the authorities?</p>

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1 A Yes.

2 Q Did you ever receive fuel usage data in any other

3 form at any other time?

4 A I received the information from Cal specific to

5 fuel burn for Fairbanks' engines. I may have

6 received it from someone else in regards to fuel

7 burn for AVL engines when they did tests at our

8 site.

9 Q Do you recall who that was?

10 A I think it was -- his name was Axel St. Aubin.

11 Then there was a point in time that we requested

12 that everything go through Pete DiCaro for one

13 source, one person.

14 Q Do you remember what those times were of when it

15 changed?

16 A I don't recall.

17 Q Were you confident that the fuel burn data you

18 were getting from AVL was accurate?

19 A Yes. I had no reason to not believe it.

20 Q Did you have any reason to believe that the FME

21 fuel burn data you were receiving was inaccurate?

22 A No.

23 Q And then you would take the fuel burn data you

24 received and you would then put it together and

25 report it to WDNR?

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1 A We didn't have to report it to the DNR, but we had

2 to submit compliance reports stating that we were

3 in compliance with our air permit.

4 Q How often did those reports go in?

5 A I believe they were every six months.

6 Q So when you submitted compliance reports, you

7 didn't have to tell WDNR what your fuel burn was?

8 A I don't believe so.

9 Q What if you were out of compliance? What were

10 your obligations to WDNR?

11 A You would have to immediately notify them when you

12 found out you were out of compliance, and then you

13 would need to send in a compliance deviation

14 report and then you would also need to submit that

15 portion of it on your -- I think it was a semi

16 annual compliance certification.

17 Q You have Plaintiff's Exhibit 98 previously marked.

18 Do you recall the e-mail chain?

19 A I do not.

20 Q Let me ask some pointed question. Again,

21 Ms. Mosley, if you want to review more of it as we

22 go, just tell me so. Okay?

23 A Okay.

24 Q Let's start with the first in time which is at the

25 bottom of the second to the last page, Joe Eves'

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1 e-mail to, among others, yourself.

2 A Uh-huh.

3 Q It goes on to the last page. This is in reference

4 to a quick logistics conference call with AVL he

5 says at the top. Then the fourth paragraph down

6 he calls you out, right?

7 A Uh-huh.

8 Q Yes?

9 A Yes. This is the same e-mail we just looked at.

10 Q He's talking about the 255,000 gallons again,

11 right?

12 A Correct.

13 Q If you go forward to the second page and your

14 e-mail of April 10th at the top of that page --

15 A Uh-huh.

16 Q I'm sorry. A couple times, Ms. Mosley, you're

17 saying "uh-huh." Our poor court reporter needs to

18 have a verbal response because that shows up in

19 the record as confusing.

20 A Understood.

21 Q I apologize. I'll remind you of that as we go.

22 For your April 10th e-mail from you to

23 Joe Eves and Kevin Lidbury -- you say "This is

24 troubling," right?

25 A Correct.

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1 Q You say "These high usages will greatly limit us

2 for the next year as this is an annual average."

3 What were you concerned about there?

4 A If you have a high number in one month -- I should

5 not have used the word "annual average." It's a

6 rolling 12-month average. You can use all of your

7 fuel up in one month, but that means you have no

8 additional fuel in subsequent months.

9 Q When you reported in your earlier e-mail on

10 April 8th the 185,000 gallons for the month of

11 June as the max, that was because there hadn't

12 been testing in the past that would have used up

13 the rolling average to that date; is that right?

14 A That would be correct.

15 Q Sorry we're jumping around. Back to your

16 April 10th e-mail on the second page. In your

17 last paragraph you say "Cal, I need to get some

18 indications from you on what stacks we can

19 increase and how high without having to do major

20 structural supports which is where things get

21 costly." Do you see that?

22 A Yes.

23 Q Did Cal respond to you with any stacks

24 information?

25 A I do not recall.

<p style="text-align: right;">Page 105</p> <p>1 Q Why were you asking Cal that question?</p> <p>2 A Cal works within the maintenance, and he would be</p> <p>3 the person to modify the stacks.</p> <p>4 Q Did Cal have any responsibility about knowing</p> <p>5 whether the stacks were or were not in compliance</p> <p>6 with the air permit?</p> <p>7 A No, he would not.</p> <p>8 Q You have Plaintiff's Exhibit 77 which includes an</p> <p>9 attached memo. Feel free to review it, but I'll</p> <p>10 ask first if you recall the e-mail or the memo.</p> <p>11 A I do not recall.</p> <p>12 Q Who is Shana Westfall?</p> <p>13 A She was a consultant that worked for ERM.</p> <p>14 Q For what purposes would you interact with Shana?</p> <p>15 A She worked with David Dusing. Depending on their</p> <p>16 workload, she would assist him with certain</p> <p>17 things.</p> <p>18 Q If you refer to the second page of the exhibit,</p> <p>19 Joe Eves' e-mail to you of April 18th at the</p> <p>20 bottom --</p> <p>21 A Yes.</p> <p>22 Q He's asking you for information to better</p> <p>23 understand the emissions permit and how it came to</p> <p>24 be.</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q There were also tables, XLS tables, provided?</p> <p>2 A Yes.</p> <p>3 Q Do you know what those were?</p> <p>4 A I do not.</p> <p>5 Q When Shana sent you the memo, were you satisfied</p> <p>6 at that time that that covered the information</p> <p>7 that you wanted to get so you could pass it on to</p> <p>8 Joe?</p> <p>9 A I don't recall.</p> <p>10 Q In Shana's memo on the first page, there's a</p> <p>11 question and a response. If you could look at the</p> <p>12 response paragraph. It's the second sentence from</p> <p>13 the bottom of that paragraph beginning "In 2005</p> <p>14 the facility revised their operating permit to</p> <p>15 incorporate the removal of units in the OP</p> <p>16 building." Do you see that?</p> <p>17 A I do.</p> <p>18 Q Did you understand that to be a reference to the</p> <p>19 stacks that had been omitted from the modeling?</p> <p>20 A No. It would have been a reference from, I</p> <p>21 believe, two paint booth units that were removed</p> <p>22 from the permit.</p> <p>23 Q So that had nothing to do with the stacks that</p> <p>24 were removed?</p> <p>25 A It did not.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q Including the modeling details that went into it?</p> <p>2 A Yes.</p> <p>3 Q Above you reach out to Shana to get that</p> <p>4 information for Joe, right?</p> <p>5 A Yes.</p> <p>6 Q You had the permit, but then you reference "I'm</p> <p>7 hoping you can help with the other stuff." What</p> <p>8 other stuff were you referring to?</p> <p>9 A In Joe's first e-mail, he asks me to identify so</p> <p>10 that he could better understand our emissions</p> <p>11 permit and how it came to be. The other stuff</p> <p>12 would be what was submitted, what went into the</p> <p>13 permit.</p> <p>14 Q Would other stuff include the application for the</p> <p>15 permit?</p> <p>16 A I'm unsure, but off the top of my head I was</p> <p>17 definitely thinking about modeling, the modeling</p> <p>18 information. But that would have been included in</p> <p>19 the application as well.</p> <p>20 Q Other than reaching out to Shana, did you</p> <p>21 personally collect anything that you then provided</p> <p>22 to Joe Eves? I do note in the first e-mail in the</p> <p>23 exhibit that you are forwarding Shana's memo to</p> <p>24 Joe, right?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q Is there anything in Ms. Westfall's memo that</p> <p>2 explained that those stacks had been omitted from</p> <p>3 the modeling?</p> <p>4 A No. But what my recollection is is that these</p> <p>5 stacks weren't omitted. We just modeled using the</p> <p>6 stacks that were going to be used in testing</p> <p>7 future engines.</p> <p>8 Q Help me understand that distinction you're making.</p> <p>9 If they weren't included in the modeling, then</p> <p>10 weren't they omitted from the modeling?</p> <p>11 A Yes. When you use the word "omitted," I thought</p> <p>12 that meant in error; that they were left off.</p> <p>13 That was what I thought your interpretation of</p> <p>14 that question was.</p> <p>15 Q I didn't mean to ascribe any meaning to it other</p> <p>16 than those stacks in footnote 22 of the P10 permit</p> <p>17 were not included in the modeling, right?</p> <p>18 A They were not included.</p> <p>19 Q From looking at Ms. Westfall's memo, there's no</p> <p>20 reference to that not including of those stacks in</p> <p>21 the modeling, right?</p> <p>22 A That's correct.</p> <p>23 Q So there's no way to tell by reading</p> <p>24 Ms. Westfall's memo that those stacks were not</p> <p>25 included in modeling?</p>

<p style="text-align: right;">Page 109</p> <p>1 A Correct.</p> <p>2 Q You have Plaintiff's Exhibit 91 previously marked.</p> <p>3 Do you recall this document?</p> <p>4 A I do not recall.</p> <p>5 Q If you look under "Current Permit" on the first</p> <p>6 page, that's the P10 permit we have already looked</p> <p>7 at today, right?</p> <p>8 A Correct.</p> <p>9 Q The first two columns under that you have got</p> <p>10 "Permit Limits," but then the last column is</p> <p>11 "Current Usage." Do you see that?</p> <p>12 A I do.</p> <p>13 Q At the time of this memo, was that the</p> <p>14 then-current usage?</p> <p>15 A Yes. It likely would have been through the end of</p> <p>16 June.</p> <p>17 Q So that 14,878 gallons per month was through the</p> <p>18 end of June of 2008?</p> <p>19 A Correct.</p> <p>20 Q For the year 2008 up until June?</p> <p>21 A This number would have been a rolling 12-month</p> <p>22 number, so it would have been a lookback period</p> <p>23 from June for the prior 12 months.</p> <p>24 Q Using the lookback analysis that you needed to do</p> <p>25 to determine whether you were under the 30,333</p>	<p style="text-align: right;">Page 111</p> <p>1 Q Do you recall what that related to?</p> <p>2 A We had an Alco engine within the modeling that at</p> <p>3 the time we no longer had customer orders for, and</p> <p>4 that engine specifically was a high emission</p> <p>5 pollutant engine. Removing that from within the</p> <p>6 modeling would likely allow increased fuel usage</p> <p>7 for other engines.</p> <p>8 Q You have Plaintiff's Exhibit 78 previously marked.</p> <p>9 Do you recall this PowerPoint?</p> <p>10 A I don't recall.</p> <p>11 Q In the course of your duties in your position at</p> <p>12 FME, would you prepare presentations for internal</p> <p>13 meetings from time to time?</p> <p>14 A Yes.</p> <p>15 Q When you prepared for those meetings, was</p> <p>16 PowerPoint a usual means of communication for you</p> <p>17 to a group?</p> <p>18 A It was one of the methods.</p> <p>19 Q What were the other methods that you employed?</p> <p>20 A It may be a verbal discussion with notes that</p> <p>21 follow.</p> <p>22 Q For the times when you prepared PowerPoints for</p> <p>23 meetings, did you prepare them yourself, or did</p> <p>24 you have an assistant?</p> <p>25 A I prepared them myself.</p>
<p style="text-align: right;">Page 110</p> <p>1 limit -- that was the then-current number through</p> <p>2 June of 2008?</p> <p>3 A I believe so.</p> <p>4 Q What was your source for that information?</p> <p>5 A My fuel use tracking compliance record.</p> <p>6 Q If you go down to "Proposed Future Permit," do you</p> <p>7 have any recollection what this related to?</p> <p>8 A I believe we were working on submitting a revised</p> <p>9 permit application, and I do recall, based on</p> <p>10 reading this memo, that there was a change made in</p> <p>11 the way modeling was completed by the WDNR. I</p> <p>12 believe it was in reference to modeling and what</p> <p>13 percent increase we may be allowed to receive</p> <p>14 under a new permit.</p> <p>15 Q Were there ever any assurances that you would be</p> <p>16 able to get this 495 percent increase in the OP</p> <p>17 building?</p> <p>18 A Never any assurances.</p> <p>19 Q Was that 499 percent increase conveyed to AVL at</p> <p>20 any time?</p> <p>21 A I wouldn't know that.</p> <p>22 Q On the second page there are a number of bullet</p> <p>23 points. The last one discusses removal of the</p> <p>24 Alco engine from the modeling.</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q When you prepared them yourself, where in your</p> <p>2 computer system would you create and store them?</p> <p>3 A I would have stored them within my hard drive.</p> <p>4 Q Is that a hard drive on your own machine?</p> <p>5 A No.</p> <p>6 Q Where is it?</p> <p>7 A A company-issued laptop.</p> <p>8 Q But you would store them on your company-issued</p> <p>9 laptop?</p> <p>10 A Yes.</p> <p>11 Q Did your company-issued laptop sync in any way</p> <p>12 with the company computer system or network?</p> <p>13 A Yes.</p> <p>14 Q How did that work?</p> <p>15 A This is over my avenue of pay grade with IT. All</p> <p>16 I can tell you is to reboot. Right?</p> <p>17 Q To the best you can tell me.</p> <p>18 A I believe it was backed up daily at the end of</p> <p>19 every day.</p> <p>20 Q Is that because you docked your laptop into the</p> <p>21 system in some means?</p> <p>22 A Yes.</p> <p>23 Q Did you do that every day?</p> <p>24 A Yes.</p> <p>25 Q And you believe the system backed up everything</p>

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1 that was on your hard drive?

2 A Yes. I think, if memory serves me right, it would

3 back up maybe what I had on -- I don't know. I

4 was going to say on like a P drive, a personal

5 drive, and that could be backed up versus just

6 solely on the computer.

7 Q So you had the capability of saving things only to

8 your laptop hard drive that would never be

9 transferred into the company system?

10 A I believe so.

11 Q Presentations for work, though -- would those be

12 saved in the backed up area or the non-backed up

13 area?

14 A They should be in the backed up.

15 Q How many laptops did you have while you were at

16 FME over time?

17 A I would have no idea.

18 Q When you left the company, what happened to your

19 laptop?

20 A I left it in my office.

21 Q You don't know what happened after that?

22 A I would not know.

23 Q At the time you left the company, would you have

24 had any PowerPoint presentations that you had

25 prepared in the past still on your hard drive?

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1 A No.

2 Q Why not?

3 A It was a company-issued computer. I left all of

4 that at work.

5 Q My question, though, is: At the time you left and

6 you left your laptop behind, as far as you knew,

7 all of the presentations you had previously

8 prepared were still on that hard drive?

9 A As far as I know. Yes.

10 Q Did you ever have occasion to go in and delete any

11 of them for any reason?

12 A No.

13 Q Now, Plaintiff's 78 -- you don't recall that?

14 A I don't.

15 Q Do you recall having a meeting or giving any type

16 of presentation on July 14, 2008?

17 A I do not.

18 Q In the first two pages of this note, we see the

19 same numbers we saw in the earlier exhibit. We

20 have the current gallons per month for the OP

21 building, correct?

22 A Correct.

23 Q And then we have the 495 percent increase for the

24 future permit, correct?

25 A Correct.

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1 Q Now, if you go a little farther in -- we have got

2 control numbers on these pages, Ms. Mosley. That

3 will help. In the lower right-hand corner I'm

4 looking at page FME 3045.

5 A Okay.

6 Q Are you there?

7 A Yes.

8 Q The second bullet from the bottom again discusses

9 "Removed Alco engine from modeling." That's the

10 same thing we just discussed, right?

11 A Yes.

12 Q Now, if we go to the next page -- this is a

13 photograph of the stacks from outside of the OP

14 building, right?

15 A Correct.

16 Q These are the stacks on the west wall, right?

17 A Yes.

18 Q You see there's some AVL designations on here.

19 A Yes.

20 Q Would those have been placed there by you in

21 creating this PowerPoint?

22 A I put the picture together. Yes.

23 Q What would the source of your information be that

24 AVL would be associated with these stack numbers?

25 A I received the information from someone. I don't

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1 recall who that would be.

2 Q If you turn another page -- you can disregard the

3 sticky note that appears in this exhibit. I'm

4 only interested in the underlying photograph in

5 the PowerPoint.

6 A Yes.

7 Q You will see 20C and 20B stacks, right?

8 A Yes.

9 Q And this picture is taken from the north of the OP

10 building looking roughly south, right?

11 A That's correct.

12 Q Same question: Do you have any understanding of

13 where you got information that would have had you

14 label these "AVL"?

15 A I had to have received something in writing from

16 them in preparation for the construction air

17 permit.

18 Q Now, when you got that information, did that

19 trigger in your mind any concerns relative to

20 those stacks not having been included in the

21 modeling for the P10 permit?

22 A No, because what I'm accustomed to is it takes

23 quite some time to build a test stand for an

24 engine to be able to go on there. I know it will

25 allow us to have early discussions and get the air

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1 permit modified before testing would actually  
2 occur.  
3 Q So you weren't concerned about it at that time?  
4 A No.  
5 Q But did you recognize that some of these stacks  
6 were stacks that were not included in the modeling  
7 for the P10 permit?  
8 A Yes.  
9 Q Did you bring that to anyone's attention at that  
10 time?  
11 A I don't recall.  
12 Q Do you know if anyone received a copy of this  
13 PowerPoint other than who may have viewed it at a  
14 meeting?  
15 A I would not know.  
16 Q You have Plaintiff's Exhibit 92. Please let me  
17 know if you recall that document.  
18 A I do not recall this document.  
19 Q I see the subject line "PSD Requirements and PSD  
20 Permitting for Air Permit." It's a memo from you  
21 dated July 22, 2008, right?  
22 A Yes.  
23 Q Earlier today we discussed the PSD and the BACT  
24 issues relative to permitting?  
25 A Yes.

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1 Q And this doesn't refresh your memory about what  
2 was going on with this document?  
3 A No. Again, I don't recall this document.  
4 Q There's an executive summary on page 3 with two  
5 options. Do you recall either of those options  
6 being discussed?  
7 A I vaguely remember that discussion.  
8 Q What do you remember about it?  
9 A Just discussing the alternative to having  
10 everything under one permit or having AVL obtain  
11 their own permit.  
12 Q Was that idea discussed at some point?  
13 A I believe so.  
14 Q As of July of 2008, was that under discussion?  
15 A I'm sorry. I don't recall the timeframe.  
16 (Exhibit No. 107 marked for  
17 identification)  
18 Q You have plaintiff's Exhibit 107. Do you recall  
19 this document?  
20 A I don't recall this document.  
21 Q Earlier today you had discussed the general memory  
22 of WDNR giving you some feedback on needing  
23 additional information as part of a modeling  
24 analysis. Did this relate to that at all?  
25 A It did. Yes.

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1 Q So by this time of July 2008, per the first  
2 paragraph, they acknowledge the receipt of an air  
3 pollution control permit application, right?  
4 A Yes.  
5 Q What was that submission that was pending at that  
6 time?  
7 MR. DeGEORGE: I'm sorry to keep  
8 doing this. I can't understand why this  
9 mistake was persistently made. I believe  
10 that this letter should also be dated 2009.  
11 If you go to the second paragraph, it refers  
12 to information that was submitted to DNR on  
13 July 21, 2009. I have no idea why they keep  
14 making this 2008 mistake, but I think that's  
15 what they did here again.  
16 I'm not trying to coach the witness  
17 or anything.  
18 MR. HERRMANN: No.  
19 MR. DeGEORGE: I'm befuddled.  
20 MR. HERRMANN: I appreciate that,  
21 Steve, and appreciate you calling that out.  
22 It is what it is.  
23 Q Just give me your best memory of this stuff.  
24 A I'm sorry. I don't recall.  
25 ///

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1 (Exhibit No. 108 marked for  
2 identification)  
3 Q You have Plaintiff's Exhibit 108. There's a cover  
4 e-mail from Brian Barbieur at DNR June 21, 2007,  
5 to you?  
6 A Correct.  
7 Q Do you recall what this relates to?  
8 A I believe this is dealing with a compliance  
9 inspection that Brian Barbieur had completed.  
10 Q Is that where he actually came out to the site?  
11 A Yes.  
12 Q The data that's included -- let me just refer to  
13 this. We're not going to spend all day with this  
14 exhibit, Ms. Mosley. Again, looking at control  
15 numbers -- if you refer in this exhibit to the  
16 stamped page WDNR 05743 -- it's about eight pages  
17 in or so. Are you there?  
18 A I think so. I believe so.  
19 Q So this is the June 21, 2008, e-mail from you to  
20 Brian Barbieur?  
21 A Yes.  
22 Q What were you forwarding here?  
23 A It looks like I had a spreadsheet that contained  
24 ultra low sulfur diesel usage, delivery usage.  
25 Q And from what records did you draw this for

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1 purposes of reporting this?

2 A From the utility records that were provided by

3 Cal Kooyenga.

4 Q Was any fuel other than low sulfur fuel burned in

5 the OP building during the represented time

6 periods here?

7 A I believe that is accurate.

8 Q So in this page attached to the e-mail, which is

9 WDNR 05744 -- that usage category -- that's the

10 number of gallons that passed through the OP

11 building during those indicated months?

12 A Correct.

13 Q You can put that aside.

14 MR. HERRMANN: 170.

15 MR. DeGEORGE: What was this

16 marked?

17 MR. HERRMANN: 100. Sorry.

18 Q You have Plaintiff's Exhibit 100 previously

19 marked. Do you recall this e-mail chain?

20 A I don't specifically recall this.

21 Q Do you remember receiving direction from Joe Eves

22 on August 15th of 2008 to go forward with the

23 permitting application?

24 A I do not recall that.

25 Q Do you recall proceeding with structural analysis

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1 with respect to the stacks?

2 A I don't recall that either.

3 Q In the August 15th e-mail on the front page from

4 you to Joe Eves, there is a reference to an

5 upcoming meeting with the WDNR on Monday.

6 A Yes. I see that.

7 Q Do you recall what that related to?

8 A I do not recall.

9 Q Then in the second paragraph of that e-mail you

10 make reference to doing a second permit. What did

11 you mean by a second permit? Do you recall?

12 A In reviewing this, it looks like the first

13 revision would have been done without structural

14 modifications. If we needed additional fuel, we

15 would have to do structural modifications.

16 Q Now turn a page in, if you would, please, to the

17 e-mail on the bottom from you to Joe Eves of

18 August 13th. Do you see that?

19 A Yes.

20 Q You reference "If we want to evaluate stack

21 heights, we would need to pass along about \$20,000

22 to AVL in structural engineering costs." What did

23 that refer to?

24 A I don't recall.

25 ///

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1 (Exhibit No. 109 marked for

2 identification)

3 Q You have Plaintiff's Exhibit 109. Again, feel

4 free to review. My first question is whether this

5 was the permit construction application submitted

6 in September of 2008.

7 A Yes. That is correct.

8 Q We discussed this earlier today?

9 A Yes.

10 Q So does this refresh your memory about when it was

11 submitted?

12 A Yes.

13 Q Turn to page WDNR 00226. Again, I'm looking at

14 the lower right-hand corner numbers. Refer to the

15 second to the last paragraph. Through this permit

16 application, the facility is requesting new annual

17 diesel fuel limitations of 1,100,000 gallons in

18 the OP building for processes P20 and P21 combined

19 and 1,000,000 gallons for testing in the LE

20 building, process 22, correct?

21 A Correct.

22 Q Is that your memory of what was being sought

23 through this permit?

24 A That's correct.

25 Q AVL engines were included in the modeling in

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1 support of this, right?

2 A That's correct.

3 Q What are you looking at? I see you're making a

4 reference to the document. Is there a page you're

5 looking at for this?

6 A I'm looking at WDNR 00236.

7 Q What appears on that page? Could you describe it?

8 A It is a table, and the title is "Hazardous Air

9 Pollutants."

10 Q And where in this table do the AVL engines appear?

11 A They would be referenced as Test Engine A, Test

12 Engine B, Test Engine C, and Test Engine D.

13 Q Why was that nomenclature used for this submittal

14 instead of "AVL" or another reference to AVL?

15 A AVL, I believe at the time, had requested, for

16 confidentiality reasons, there not be a name

17 identified.

18 Q But you understood these were AVL engines?

19 A Yes.

20 Q And AVL provided you the data that was used for

21 this modeling, correct?

22 A Correct.

23 Q And were you satisfied with the accuracy of that

24 data provided?

25 A I don't recall.

<p style="text-align: right;">Page 125</p> <p>1 Q Well, FME would not have made a submission for a 2 permit to WDNR without ensuring reasonable 3 accuracy of the data it was providing, right? 4 A Forgive me. The reason for my hesitation -- 5 typically when we submit a permit application to 6 the State, we know precisely what engine will be 7 run on which test stand. AVL did not have that 8 understanding to know for future reference what 9 engines they would obtain. We asked them to give 10 us that information, and it was difficult for them 11 because they didn't precisely know what type of 12 engine. And I believe they would submit the 13 maximum, the worst case scenario engine, that they 14 would obtain to run on that test stand. 15 Q Were you satisfied that that was a good faith 16 submission by AVL? 17 A Yes. 18 Q Did you have any reason to doubt that the maximums 19 that were computed were in any way subject to some 20 purposeful misstatement? 21 A No. 22 Q So you were confident when you put this 23 application in that you had the best data 24 available? 25 A Yes.</p>	<p style="text-align: right;">Page 127.</p> <p>1 Q And for Plaintiff's 105 or Plaintiff's 107 -- do 2 any of the issues raised in those documents relate 3 to the AVL engines? 4 A In Exhibit 107 what I recall is when we submitted 5 the application we used the words "typical 6 emissions," and they signified that that may 7 constitute a violation. 8 Q And that related to the AVL engines? 9 A Correct. 10 Q So what did you do about that going forward? 11 A I believe we identified working through with AVL 12 -- this is becoming clearer to me. The DNR was 13 not allowing typical emissions. They wanted to 14 know maximum emissions. 15 Q So after receiving Plaintiff's 105 and 107 from 16 WDNR, you went back to AVL, correct? 17 A Correct. 18 Q And you got additional data from AVL? 19 A What I recall is I requested it numerous times, 20 and it was very difficult to get from AVL. 21 Q Did you get it from AVL? 22 A I don't recall. 23 Q Was it coming to you through someone at FME or 24 were you dealing directly with someone from AVL? 25 A At that point in time I was having direct</p>
<p style="text-align: right;">Page 126</p> <p>1 Q Did WDNR ever return to you and ask for any 2 further clarification of data for those engines? 3 A Yes. I believe that was one of the exhibits 4 previously presented. 5 Q About the BACT analysis? 6 A I don't recall. 7 Q Feel free to go through the exhibits if you recall 8 a specific one that addressed that issue. 9 A I believe it was in reference to Exhibit No. 107. 10 Q Mr. DeGeorge's earlier comment about the dating of 11 Plaintiff's 107 -- do you believe that's correct, 12 and that -- 13 A The date -- I believe he has the wrong year. 14 Q So it would be 2009 for 107? 15 A 2009. 16 Q From the time you submitted in September until the 17 date of Plaintiff's 107 in 2009? 18 A It sounds appropriate. 19 Q It took DNR that long to get back to you and 20 provide you comments? Or did you receive other 21 comments at another time? 22 A Similar to Exhibit 105 from the same permit 23 reviewer, we were having discussions earlier as he 24 was proceeding through his evaluation of the 25 permit application.</p>	<p style="text-align: right;">Page 128</p> <p>1 conversations with Axel St. Aubin. 2 Q And what specifically was it, the additional data, 3 that you needed beyond what had already been 4 submitted with the permit application? 5 A I needed to know what maximum emissions would be 6 on each test stand. 7 Q And what data would go into that? Is it like 8 maximum emissions over a certain period of time? 9 Or is it just a feature of the engine that needed 10 to be known? 11 A It's over a certain amount of time based on the 12 parameter. 13 Q The parameter of the engine? 14 A Yes. The parameter meaning NOx, SOx, PM, VOCs. 15 Q Correct me if I'm wrong. Numbers for those data 16 categories had already been submitted for the AVL 17 engines with the original permit, right? 18 A They were submitted as typical. 19 Q But you needed maximum? 20 A Correct. 21 Q Do you have any understanding of whether the data 22 AVL provided you was in fact maximum and it was 23 just described in the application as typical? 24 A No. It was not maximum. 25 Q How did you know it was not maximum?</p>

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1 A AVL had a difficult time understanding what  
2 maximum would mean because they didn't know what  
3 engines they would come in contract with.  
4 Q Well, what engines were used for the original  
5 modeling when the permit was submitted?  
6 A They gave us emissions based on typical for what  
7 they planned to test in the future.  
8 Q The permit was not applied for until September of  
9 2008, correct?  
10 A Correct.  
11 Q What, to your knowledge, was AVL told at any time  
12 prior to September of 2008 about what type of  
13 engine data would be necessary in order to secure  
14 a new permit?  
15 A In working with ERM as our consultant, they would  
16 have had the necessary information that was  
17 required for them to model with. I don't  
18 specifically recall what that is.  
19 Q ERM was FME's consultant, right?  
20 A Correct.  
21 Q So at any time prior to 2008, do you know whether  
22 AVL was told at any time what type of engine data  
23 was necessary to support the new permit?  
24 A Yes. They would have had to supply what we needed  
25 to give us the typical values.

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1 Q Did FME ask AVL for typical values or maximum  
2 values?  
3 A We asked AVL to provide their engine testing  
4 emissions data so we could model.  
5 Q When the permit application was submitted, you,  
6 FME or ERM, used the word "typical," right?  
7 A Correct.  
8 Q So what did you ask AVL to provide? Typical or  
9 maximum?  
10 A Again, the same thing I just said. We asked AVL  
11 to submit to us the engine emissions information  
12 on what future tests they would run.  
13 Q And when you submitted the permit in 2009, you  
14 understood that that data was typical and not  
15 maximum because the words "typical" were used in  
16 the permit, right?  
17 A That's correct.  
18 Q In the application?  
19 A Yes.  
20 Q So at the time FME submitted for the permit  
21 application, you understood that the AVL engine  
22 data was typical and not maximum?  
23 A Correct.  
24 Q At some point prior to the submission of the  
25 permit -- at that time you didn't see any issue

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1 with AVL only providing you typical engine data,  
2 right?  
3 A I had never done it that way because we always  
4 knew what engine was on the test stand. So we  
5 were doing our best to work with them to try to  
6 get a permit that included everyone's engines.  
7 Q But at the time the best you could do was typical,  
8 and AVL knew that and FME knew that.  
9 A Yes.  
10 (Exhibit No. 110 marked for  
11 identification)  
12 Q You have Plaintiff's Exhibit 110. Do you recall  
13 that document?  
14 A I don't recall.  
15 Q Do you recall having any exchanges with  
16 Steve Plewa at AVL?  
17 A Yes. I had conversations with Steve.  
18 Q What conversations with Steve do you recall?  
19 A I recall when he came to the facility to review  
20 the area, and that is when he produced this  
21 document.  
22 Q When did he come to the facility?  
23 A I don't recall, but, according to his e-mail, it  
24 was on August 21, 2008.  
25 Q He references a conversation and not necessarily a

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1 visit, but your memory is it was Steve's visit to  
2 FME?  
3 A Yes.  
4 Q What do you recall about his visit?  
5 A I remember when he came we actually were sitting  
6 outside of the OP building at a picnic table to  
7 review some documents that he had with him. I  
8 recall during that conversation him asking about  
9 current remediation activities that were going on  
10 and that he asked to see one of the remediation  
11 reports.  
12 Q Do you recall anything else about that visit?  
13 A That's it.  
14 Q What documents did Steve have with him at the time  
15 that you were reviewing?  
16 A I don't specifically recall.  
17 Q Was one of the documents the P10 permit?  
18 A I'm sorry. I don't recall.  
19 Q Did you provide any documents to Steve during his  
20 visit?  
21 A I remember providing the remediation report to  
22 him, and he took it back with him because it was a  
23 bound document, and said he would review it and  
24 then send it back.  
25 Q Did you give him any other documents?

<p style="text-align: right;">Page 133</p> <p>1 A Not that I recall.</p> <p>2 Q So you don't remember either reviewing the P10</p> <p>3 permit or providing it to Steve at that meeting,</p> <p>4 correct?</p> <p>5 A I do not recall.</p> <p>6 Q Do you recall providing Steve a copy of or</p> <p>7 reviewing the application that went into the P10</p> <p>8 permit?</p> <p>9 A The application wouldn't have been prepared at</p> <p>10 that time during that conversation, so I did not</p> <p>11 share the application with him. For the others I</p> <p>12 do not recall.</p> <p>13 Q You may have misunderstood my question. I</p> <p>14 apologize. I'm asking about the application that</p> <p>15 became the then-current 2005 permit.</p> <p>16 A I understood your question.</p> <p>17 Q Why would the application have not been submitted</p> <p>18 already for the 2005 permit?</p> <p>19 A It wasn't submitted until -- I'm sorry.</p> <p>20 Q That's okay.</p> <p>21 A I misunderstood. Thank you.</p> <p>22 Q I knew you did.</p> <p>23 A My apology.</p> <p>24 Q That's okay. I am just asking whether you had</p> <p>25 provided or showed Steve the original --</p>	<p style="text-align: right;">Page 135</p> <p>1 Q Did you have any discussion with Steve at all</p> <p>2 about the stacks and their relation to permitting</p> <p>3 issues?</p> <p>4 A I don't recall.</p> <p>5 Q Do you recall showing Steve any of the stacks in</p> <p>6 the context of which ones may be used by AVL?</p> <p>7 A I'm sorry. I do not recall.</p> <p>8 Q Did you keep any notes of your meeting with Steve</p> <p>9 when he came?</p> <p>10 A I did not.</p> <p>11 Q Did you do any writeup afterward reporting on</p> <p>12 Steve's visit?</p> <p>13 A I did not.</p> <p>14 Q Even in the form of like an e-mail summary to</p> <p>15 anyone? Nothing?</p> <p>16 A No.</p> <p>17 Q Did you at any other time have any discussion with</p> <p>18 Steve Plewa about the P10 permit?</p> <p>19 A Yes. I vaguely remember a discussion about the</p> <p>20 permit. He had asked some specific questions</p> <p>21 about the permit, and at that point in time I</p> <p>22 remember thinking to myself that he did a nice job</p> <p>23 doing upfront homework because he had to have</p> <p>24 pulled the air permit from the Wisconsin website</p> <p>25 because I hadn't provided it to him.</p>
<p style="text-align: right;">Page 134</p> <p>1 A No.</p> <p>2 Q -- submission.</p> <p>3 A I did not show the original 2005 permit</p> <p>4 application to him.</p> <p>5 Q Thank you. Or provide a copy of it to him, right?</p> <p>6 A No.</p> <p>7 Q What did the remediation report consist of that</p> <p>8 you gave to Steve?</p> <p>9 A It was information on monitoring wells and where a</p> <p>10 designated plume was located on our property and</p> <p>11 how much material we have pulled from those</p> <p>12 monitoring pumps.</p> <p>13 Q Did that remediation report in its entirety only</p> <p>14 address ground contamination concerns?</p> <p>15 A Yes.</p> <p>16 Q Did you have any discussion with Steve Plewa when</p> <p>17 he visited about air permit compliance issues?</p> <p>18 A We did not discuss compliance air permit issues.</p> <p>19 Q Other than sitting outside the OP building at the</p> <p>20 table, did you provide any type of tour to Steve</p> <p>21 when he visited?</p> <p>22 A I did not. He had already toured the area from</p> <p>23 what I recall.</p> <p>24 Q Do you know who gave him the tour?</p> <p>25 A I do not.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q When did you have this discussion with Steve?</p> <p>2 A It was sometime in 2008.</p> <p>3 Q Do you remember whether it was during this</p> <p>4 August 21st visit?</p> <p>5 A I don't believe it was during that visit.</p> <p>6 Q Was it at some later time?</p> <p>7 A Yes.</p> <p>8 Q Was it at any time between the August 21st visit</p> <p>9 and August 28th of 2008?</p> <p>10 A I'm unsure.</p> <p>11 Q How long was it before Steve came back again to</p> <p>12 visit?</p> <p>13 A I only remember meeting him once, but I may be</p> <p>14 mistaken. That's all I can recall in person.</p> <p>15 Q Well, the conversation you had with him about the</p> <p>16 permit -- would that have been over the phone?</p> <p>17 A Over the phone or through e-mail.</p> <p>18 Q But that occurred some time after his physical</p> <p>19 visit that's referenced in Plaintiff's 110?</p> <p>20 A I believe so.</p> <p>21 Q Do you recall how much after the August 21, '08,</p> <p>22 date you had that phone conversation with him?</p> <p>23 A I'm unsure.</p> <p>24 Q Turn to the second page of Plaintiff's 110.</p> <p>25 Focusing on the environmental section of Steve's</p>

<p style="text-align: right;">Page 137</p> <p>1 summary, the first bullet point -- do you recall</p> <p>2 discussing that AVL estimated usage with him when</p> <p>3 he visited?</p> <p>4 A I do not recall that.</p> <p>5 Q And the second bullet point -- do you recall</p> <p>6 discussing with him that there would be up to two</p> <p>7 engines at once in the current location?</p> <p>8 A I don't recall that either.</p> <p>9 Q Do you recall a discussion of running up to four</p> <p>10 engines at once in 2009 at the top of the next</p> <p>11 page?</p> <p>12 A I just know that discussion had to have happened</p> <p>13 because of the four test stands submitted with the</p> <p>14 construction air permit application.</p> <p>15 Q Did you have any discussions with Steve during his</p> <p>16 visit about any particular level of fuel usage</p> <p>17 that FME would require going forward?</p> <p>18 A I did not.</p> <p>19 Q Did you talk at all about FME fuel requirements in</p> <p>20 your meeting with Steve?</p> <p>21 A I don't recall.</p> <p>22 Q Did you talk at all with Steve just in general</p> <p>23 about what FME engines would be tested in the OP</p> <p>24 building?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 139</p> <p>1 A I don't recall.</p> <p>2 Q You have Plaintiff's 93 previously marked. Do you</p> <p>3 recall this exhibit?</p> <p>4 A I don't recall.</p> <p>5 Q In the bottom e-mail on this exhibit do you recall</p> <p>6 what you were referring to by the changes with</p> <p>7 AVL?</p> <p>8 A I'm sorry. I do not know.</p> <p>9 (Exhibit No. 113 marked for</p> <p>10 identification)</p> <p>11 Q You have Plaintiff's Exhibit 113. Do you recall</p> <p>12 this submission to WDNR?</p> <p>13 A I do not recall.</p> <p>14 Q This relates to a then-pending application, right?</p> <p>15 A Yes.</p> <p>16 Q The permit to construct in the subject line is</p> <p>17 08-DCV-235, right?</p> <p>18 A That's correct.</p> <p>19 Q Is that the one that was submitted in September of</p> <p>20 2008?</p> <p>21 A That is correct.</p> <p>22 Q If you look in the second paragraph on the cover</p> <p>23 letter to Mr. Faith, it says "FME has had to</p> <p>24 change the scope of the project." Do you recall</p> <p>25 what that change of scope was?</p>
<p style="text-align: right;">Page 138</p> <p>1 MR. HERRMANN: Would you like to</p> <p>2 take a break?</p> <p>3 THE WITNESS: I would love to.</p> <p>4 Thank you.</p> <p>5 (Exhibit No. 111 marked for</p> <p>6 identification)</p> <p>7 Q You have Plaintiff's Exhibit 111. Do you recall</p> <p>8 this document?</p> <p>9 A I don't recall this document.</p> <p>10 Q Do you recall any discussion with Steve Plewa</p> <p>11 about cooling tower restrictions at all?</p> <p>12 A I don't recall.</p> <p>13 Q This wasn't one of the topics you discussed with</p> <p>14 Steve at his August 21st visit, right?</p> <p>15 A No.</p> <p>16 Q You don't remember or you know it wasn't?</p> <p>17 A I don't remember.</p> <p>18 (Exhibit No. 112 marked for</p> <p>19 identification)</p> <p>20 Q You have Plaintiff's Exhibit 112. Do you recall</p> <p>21 this exhibit?</p> <p>22 A I don't recall this.</p> <p>23 Q Do you recall at any time discussing capital</p> <p>24 justifications for facility upgrades with respect</p> <p>25 to the AVL relationship?</p>	<p style="text-align: right;">Page 140</p> <p>1 A It looks to be that, based on the questions we</p> <p>2 received from Don Faith on a previous information</p> <p>3 request, we were withdrawing requesting any</p> <p>4 additional fuel in the large engine building.</p> <p>5 Q Is that the reason why this was submitted?</p> <p>6 A I believe it was to answer his questions from his</p> <p>7 October 15, 2008, letter.</p> <p>8 Q In response, you indicated that the large engine</p> <p>9 building was being withdrawn, right? Well, you</p> <p>10 didn't.</p> <p>11 A I think that it wasn't in response to. It was</p> <p>12 just that we were only going to pursue further</p> <p>13 fuel usage increase in the OP building.</p> <p>14 Q So at this point in time, January 27th of 2009,</p> <p>15 that would have still included the four-engine AVL</p> <p>16 inclusion in that permit application, right?</p> <p>17 A Yes. That's correct.</p> <p>18 (Exhibit No. 114 marked for</p> <p>19 identification)</p> <p>20 Q You have Plaintiff's Exhibit 114. Do you recall</p> <p>21 this submission?</p> <p>22 A I do not recall.</p> <p>23 Q Do you know why Dan Guido would have been</p> <p>24 submitting a consolidated BACT document at this</p> <p>25 time?</p>

<p style="text-align: right;">Page 141</p> <p>1 A According to his letter, he's compiling all of the 2 elements that they previously requested during the 3 permit review period to date. 4 Q Was the purpose of this submission to continue to 5 confirm with DNR that no BACT installations would 6 be required? 7 A I would have to look pretty deep into the document 8 to answer that. I don't recall. 9 Q You can I take a look at it. Go ahead. I don't 10 require any details on the BACT analysis other 11 than just my question. I just want to understand 12 whether the purpose of this submittal was to 13 continue to ensure that you could get a permit 14 without having to install BACT. 15 A It looks like according to page number WDNR 16 00370 that based on the evaluation FME asserts 17 that BACT for NOx is proposed as good engine 18 design and an emission limit of not more than 19 147.6 tons per year of NOx to be monitored by 20 tracking fuel use limited to not more than 75,000 21 gallons per month. So BACT in this case would 22 have been based on good engine design. 23 Q As opposed to any installation of aftertreatment? 24 A That is correct. 25 Q So just the engines themselves?</p>	<p style="text-align: right;">Page 143</p> <p>1 point number two, clean up an error in the 2 previous permit. 3 Q I'm sorry. What reference are you making again? 4 You're on 6533? 5 A That is correct. 6 Q And where are you on the page? 7 A I'm on the bold where there are six bold items 8 listed. 9 Q Yes. 10 A I'm on item number two. 11 Q And that is a correction that needed to be made to 12 the then-current P10 permit? 13 A That is correct. 14 Q And that correction related to the per year gallon 15 limit for the OP building? 16 A When the permit was issued, the 1,250,000 gallon 17 number was incorrect. I was aware of that, and we 18 abided within our facility under the 364,000 19 gallon permit that we knew was the correct number. 20 Q So when did that error first come to your 21 attention? 22 A I don't recall. 23 Q Had the error previously been reported to WDNR in 24 any sense? Or was this the first time it was 25 addressed? With the understanding that you stayed</p>
<p style="text-align: right;">Page 142</p> <p>1 A Yes. 2 Q No facility installation of any type? 3 A No. 4 (Exhibit No. 115 marked for 5 identification) 6 Q You have Plaintiff's Exhibit 115. Can you 7 identify that document for me. 8 A It is an operating permit renewal application that 9 was submitted to the DNR on November 12, 2009. 10 Q Is this to renew the P10 permit? 11 A That is correct. 12 Q Help me understand, Ms. Mosley. I think we 13 covered this a little bit earlier. Again, the 14 interrelationship between the operating permit and 15 the construction permit. You needed to submit 16 Plaintiff's 115 in order to renew the P10 permit 17 regardless of whether there were any construction 18 applications also being submitted; is that 19 correct? 20 A That is. Yes. 21 Q Does this application in Plaintiff's 115 address 22 any requests for fuel burn increases? 23 A It does not include a fuel use increase, but on 24 page WDNR 06533 there are six items in which we 25 requested the State change, or, in this case as to</p>	<p style="text-align: right;">Page 144</p> <p>1 under the lower limit. 2 A I'm sure I had a conversation with Brian Barbieur 3 about how best to get it corrected. 4 Q So this area here on this page, number two, is one 5 correction that was being made. Did the other 6 items, one through six -- is that the 7 modifications that are being sought for the 8 renewal? 9 A That is correct. 10 Q Is there anything in this section, one through 11 six, that relates to the stacks in the OP building 12 that had not been included in the modeling for the 13 prior permit? 14 A There is not because that type of change would be 15 too significant for a permit renewal. You would 16 need to submit a construction application. 17 Q If you turn to page 6555, what follows was also 18 part of the November 12, 2009, submission, 19 correct? This draft permit markup? 20 A That is correct. 21 Q Did you review this draft permit markup before it 22 went in? 23 A I don't recall. 24 Q If you turn to page 6573, you see footnote 22 on 25 that page.</p>

<p style="text-align: right;">Page 145</p> <p>1 A Yes.</p> <p>2 Q Is that the same footnote that carried over from</p> <p>3 the P10 permit itself?</p> <p>4 A Yes.</p> <p>5 Q Now, this marking is not mine on this page, and I</p> <p>6 don't know who added this marking. Do you recall</p> <p>7 anything about the pen marking on the footnote?</p> <p>8 A I don't recall. I thought if there was input that</p> <p>9 was submitted, it was done electronically through</p> <p>10 strike through.</p> <p>11 Q What is strike through?</p> <p>12 A On the computer where it would be done by computer</p> <p>13 to draw a strike through line.</p> <p>14 Q I apologize. I thought you were referring to some</p> <p>15 automated system with WDNR.</p> <p>16 A By no means.</p> <p>17 Q How is this submittal made to WDNR? Is it mailed</p> <p>18 or is it submitted electronically?</p> <p>19 A It is mailed.</p> <p>20 Q Did they have any electronic system for</p> <p>21 submissions?</p> <p>22 A I don't believe so at that time.</p> <p>23 Q Sorry. Go ahead. Back to footnote 22. I see</p> <p>24 this strike out marking on this. Was that</p> <p>25 included in the submission by ERM?</p>	<p style="text-align: right;">Page 147</p> <p>1 (Exhibit No. 116 marked for</p> <p>2 identification)</p> <p>3 Q You have Plaintiff's Exhibit 116. Do you recall</p> <p>4 this document?</p> <p>5 A I do not recall.</p> <p>6 Q Do you know one way or the other whether you</p> <p>7 prepared this?</p> <p>8 A It would lead me to believe I did. I would have</p> <p>9 no reason not to believe that.</p> <p>10 Q You don't recall for what reason it was prepared?</p> <p>11 A I'm trying to refresh my memory the best I can.</p> <p>12 It looks as though it was prepared in anticipation</p> <p>13 for the new changes in regulations for diesel</p> <p>14 engine emissions. I really am unsure.</p> <p>15 Q Do you know whether it was prepared only with an</p> <p>16 eye toward increased fuel burn that would support</p> <p>17 FME only or FME and AVL combined?</p> <p>18 A The reason that we requested the increase in fuel</p> <p>19 usage was for AVL.</p> <p>20 Q Was there a time on the horizon where FME would</p> <p>21 need to make adjustments to its permitting for its</p> <p>22 own purposes?</p> <p>23 A No.</p> <p>24 Q Were there changes in regulations that would</p> <p>25 require FME at some point in the future to put</p>
<p style="text-align: right;">Page 146</p> <p>1 A Are you talking about the pen strike through?</p> <p>2 Q Correct. In footnote 22. I don't know if someone</p> <p>3 was attempting to underline it or strike it out.</p> <p>4 I just want to know if you know anything about who</p> <p>5 may have made those markings.</p> <p>6 A I do not. It looks as though any indications they</p> <p>7 did are marked by computer, so I would have no</p> <p>8 idea who did a pen strike through.</p> <p>9 Q Well, this was submitted with computer markings,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q Because this was a draft markup that ERM had done,</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q All right. So do you know before it was mailed if</p> <p>16 ERM or anyone at FME made those pen markings?</p> <p>17 A I don't recall.</p> <p>18 Q Do you know one way or the other whether</p> <p>19 footnote 22 remained in this draft application in</p> <p>20 this submittal as of November 12, 2009? I know</p> <p>21 it's in the typing. Was there an intent to cross</p> <p>22 it out?</p> <p>23 A There would not have been because that would have</p> <p>24 required a construction permit.</p> <p>25 ///</p>	<p style="text-align: right;">Page 148</p> <p>1 aftertreatment on test stands?</p> <p>2 A Yes.</p> <p>3 Q Describe that for me, if you would.</p> <p>4 A There were changes coming down in the regulations,</p> <p>5 and we needed to understand when the State was</p> <p>6 going to adopt those changes in federal</p> <p>7 regulations and that it would become an issue</p> <p>8 either in the next construction permit that you</p> <p>9 submitted for or the next time you would have to</p> <p>10 renew your operating permit.</p> <p>11 Q So assume AVL never came on the scene. These</p> <p>12 regulations would apply to FME regardless,</p> <p>13 correct?</p> <p>14 A That is correct.</p> <p>15 Q What is the earliest date FME would need to comply</p> <p>16 with those new regs by installing aftertreatment?</p> <p>17 A I don't recall the exact date, but it was a long</p> <p>18 way out. But we needed to begin thinking about it</p> <p>19 because there were several test stands, a high</p> <p>20 dollar amount, and to become cognizant that that</p> <p>21 would be necessary.</p> <p>22 Q When you say "a long way out," can you give me a</p> <p>23 timeframe?</p> <p>24 A The reason that it's not -- first off, I would</p> <p>25 have to look at the State adoption implementation</p>

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1 plan. We had these discussions strategically  
2 before then. So whenever the State of Wisconsin  
3 would have adopted the lower limits by the federal  
4 government -- then you wouldn't be required to  
5 consider those until your next permit renewal or  
6 change to your permit, so it's not easy just to  
7 give a date.  
8 Q Other than an exact date, can you give me a year?  
9 A I cannot.  
10 Q When did the strategic discussions begin at FME  
11 looking at this issue?  
12 A When we learned of the changes in the federal  
13 government to identify when those would be adopted  
14 by the State of Wisconsin.  
15 Q So when was FME's first look at that?  
16 A It was likely around 2010, but I do not recall  
17 specifically.  
18 Q Do you recall whether there were discussions at  
19 FME of whether or not to invest in the  
20 aftertreatment that would be required and how much  
21 it would cost?  
22 A There were those discussions. Yes.  
23 Q When did they occur?  
24 A I believe they occurred in 2011 when we were  
25 having many discussions with AVL because we were

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1 coming close to running up against our fuel use  
2 limitation and we had known at that point in time  
3 that the DNR, depending on their adoption date,  
4 may require us to have lower emissions for our  
5 next submittal.  
6 Q Regardless of whether AVL continued to test?  
7 A Correct. Only, again, if we were to make changes  
8 to our air permit and need a construction permit.  
9 Q As of 2011?  
10 A Yes.  
11 Q But even if AVL were never on the scene, there  
12 would still come a time when FME would need to put  
13 aftertreatment on, correct?  
14 A Correct.  
15 (Exhibit No. 117 marked for  
16 identification)  
17 Q You have Plaintiff's Exhibit 117. Do you recall  
18 this one?  
19 A I do not recall this document.  
20 Q You don't recall receiving on April 7, 2010,  
21 answers to emissions and fuel consumption  
22 questions from Dan Schwarz at AVL?  
23 A No. I do not remember this.  
24 (Exhibit No. 118 marked for  
25 identification)

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1 Q You have Plaintiff's Exhibit 118. Do you recall  
2 this PowerPoint?  
3 A I don't specifically recall it.  
4 Q Do you recall whether this relates to the issue of  
5 mandatory controls being placed on emissions  
6 points?  
7 A I may have made an error. When we looked at this,  
8 there was new modeling requirements, a one-hour  
9 NOx, PM 2.5.  
10 Q You're on page 2 of the exhibit right now?  
11 A I am. What I recall is it wasn't necessarily a  
12 requirement to put additional controls on. But,  
13 if you didn't put controls on, you would have had  
14 to take a much lower reduction limit on your fuel  
15 usage. I want to be clear that I don't think the  
16 State ever mandated that you had to put controls  
17 on. I inaccurately stated that before.  
18 Q Nevertheless, if AVL had never come on the scene,  
19 would FME have still put controls on in order to  
20 stay within these bounds?  
21 A It would have had to have been evaluated by  
22 modeling and what is the fuel use limitation you  
23 would have had to have taken and then taken a look  
24 at what the business need is to see if there is an  
25 avenue, according to the business strategy, that

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1 they would be able to produce the engines and run  
2 them and meet the new limits.  
3 Q Was that analysis conducted by FME?  
4 A It was not.  
5 Q Why not?  
6 A Because the changes hadn't yet come.  
7 Q Well, you would have to plan for the changes to  
8 come, right?  
9 A Yes.  
10 Q But you hadn't yet --  
11 A No.  
12 Q -- done this as of April 2010?  
13 Do you need to take that?  
14 MR. DeGEORGE: Do you need a break?  
15 THE WITNESS: No.  
16 Q The changes had not yet come as of April 2010?  
17 A So it looks like there was restrictions or changes  
18 for PM 2.5 and one-hour NOx. Those had taken  
19 place.  
20 Q Did they require aftertreatment?  
21 A Again, it was -- according to this next bullet on  
22 page 2 -- the second bullet said possible add-on  
23 controls, so we would have needed to understand  
24 what self-restriction we would have had to take  
25 and put in place in order to stay within the new

<p style="text-align: right;">Page 153</p> <p>1 regulated threshold or have the option to put</p> <p>2 controls in.</p> <p>3 Q If you turn to the fourth page, the last bullet</p> <p>4 point in bold, "Last week WDNR informed ERM that</p> <p>5 these requirements will apply to the permit</p> <p>6 currently under review for FME."</p> <p>7 A That's correct.</p> <p>8 Q What was your understanding of that?</p> <p>9 A This would have applied to the construction permit</p> <p>10 that was submitted in 2008.</p> <p>11 Q And aftertreatment would have to be put on to meet</p> <p>12 that compliance?</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 A Again, I'll say the same thing.</p> <p>16 Q I may be misunderstanding you, so help me out.</p> <p>17 A No problem. My understanding under the new</p> <p>18 modeling requirements is you may have to</p> <p>19 self-inflict a lower limitation to keep yourself</p> <p>20 below the threshold. If because of business needs</p> <p>21 you're unable to do that to continue to run your</p> <p>22 business -- at that point in time you would have</p> <p>23 to put controls on to allow yourself a greater</p> <p>24 limit to be able to run the engines now having</p> <p>25 controls.</p>	<p style="text-align: right;">Page 155</p> <p>1 Q When was it that WDNR first told you that you</p> <p>2 wouldn't need to worry about this for the</p> <p>3 September 2008 permit submission?</p> <p>4 A It was in their broad publication as to how DNR</p> <p>5 was going to interpret the changes under the</p> <p>6 State.</p> <p>7 Q And when had that publication been issued by DNR?</p> <p>8 A I don't recall.</p> <p>9 Q Was it before you submitted the September</p> <p>10 submission?</p> <p>11 A No.</p> <p>12 Q It came some time later?</p> <p>13 A Yes.</p> <p>14 Q What did FME know about these upcoming regulations</p> <p>15 at the time the September construction permit was</p> <p>16 submitted?</p> <p>17 A We were unaware that there was changes coming in</p> <p>18 the regulations.</p> <p>19 Q So WDNR imposed those changes later, and, when</p> <p>20 they were imposed first, told you that if you</p> <p>21 already had an application in, they weren't going</p> <p>22 to apply to you?</p> <p>23 A I'm pretty certain they didn't tell us</p> <p>24 specifically. The guidance that you could go out</p> <p>25 and read on their website or from their</p>
<p style="text-align: right;">Page 154</p> <p>1 Q Was there a reason why WDNR informed ERM of this</p> <p>2 at this time?</p> <p>3 A We wanted to understand from the DNR when these</p> <p>4 changes were going to be taking place. We were</p> <p>5 originally informed by the DNR that if you had</p> <p>6 something that was already submitted that it would</p> <p>7 not fall under the new regulations, but the DNR</p> <p>8 took the stance that they had been working on it</p> <p>9 for quite some time and it would indeed apply to</p> <p>10 this construction permit.</p> <p>11 Q And at this time this was the construction permit</p> <p>12 that had been submitted in September of 2008,</p> <p>13 correct?</p> <p>14 A That is correct.</p> <p>15 Q And had the engine burn modeling changed at all</p> <p>16 from that point until the time that WDNR informed</p> <p>17 ERM of this?</p> <p>18 A The modeling didn't change. Only the regulation.</p> <p>19 Q That's my question.</p> <p>20 A Yes. So now you needed to model -- it was</p> <p>21 previously PM 10. Now you needed to model for PM</p> <p>22 2.5. I believe that the previous NOx number was</p> <p>23 based on -- I'm not sure. It might have been a</p> <p>24 24-hour period, and now they were taking it down</p> <p>25 to a one-hour period.</p>	<p style="text-align: right;">Page 156</p> <p>1 publications stated when you would at this point</p> <p>2 going forward submit, whether it was a new</p> <p>3 construction permit application or some type of</p> <p>4 permit application, these rules would now apply to</p> <p>5 you.</p> <p>6 Q And they informed FME that the rules were going to</p> <p>7 apply to the then-pending permit sometime in April</p> <p>8 2010?</p> <p>9 A Yes. If I could just point out slide number four.</p> <p>10 Q Sure. Go ahead.</p> <p>11 A Memory doesn't do me much justice. Both of those</p> <p>12 bullet points refer to the question that you asked</p> <p>13 me. In November 2009, DNR implemented</p> <p>14 requirements for PM 2.5. In April 2010, DNR</p> <p>15 implemented the one-hour NOx standard.</p> <p>16 Q Thank you.</p> <p>17 (Exhibit No. 119 marked for</p> <p>18 identification)</p> <p>19 Q You have Plaintiff's Exhibit 119. Do you recall</p> <p>20 this document?</p> <p>21 A I do not recall.</p> <p>22 Q You have Plaintiff's Exhibit 20. I understand</p> <p>23 these would not be your notes; is that correct?</p> <p>24 A That is correct.</p> <p>25 Q Do you recall attending an internal FME meeting on</p>

<p style="text-align: right;">Page 157</p> <p>1 May 24th of 2011?</p> <p>2 A I don't recall.</p> <p>3 Q You have Plaintiff's Exhibit 21 previously marked.</p> <p>4 Do you recall that slide presentation?</p> <p>5 A I don't specifically recall.</p> <p>6 Q Do you recall whether you prepared this slide</p> <p>7 presentation?</p> <p>8 A It certainly looks like this came from me.</p> <p>9 Q It's an internal FME review, so this would be an</p> <p>10 in-house FME meeting only?</p> <p>11 A That's correct.</p> <p>12 Q Turn to page 8, if you would. The top slide</p> <p>13 refers to meeting with WDNR for increased fuel</p> <p>14 usage. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q That's under the "Immediate Requirements" heading?</p> <p>17 A Yes.</p> <p>18 Q Do you recall why that would be immediate?</p> <p>19 A From what I recall, we were very close to our fuel</p> <p>20 use limit with AVL, and we wanted to see what</p> <p>21 alternatives we could provide quickly for them to</p> <p>22 allow for additional testing.</p> <p>23 Q When was that meeting to take place? Was there a</p> <p>24 date for it or was it just something you needed to</p> <p>25 schedule?</p>	<p style="text-align: right;">Page 159</p> <p>1 A It would be have been test stand S20B, S20C, S20A,</p> <p>2 and S21E.</p> <p>3 Q What document are you looking at right now?</p> <p>4 A I'm looking at the construction permit application</p> <p>5 from September 2008.</p> <p>6 Q What's the exhibit number?</p> <p>7 A Exhibit No. 109.</p> <p>8 Q And you just referred to the test stands that were</p> <p>9 identified in that submittal as to be used for AVL</p> <p>10 engine testing, correct?</p> <p>11 A Correct.</p> <p>12 Q Now, those S designations -- are those stacks?</p> <p>13 A Yes.</p> <p>14 Q So which of those from Plaintiff's 109 would have</p> <p>15 fallen under the non-permitted AVL engines note in</p> <p>16 Plaintiff's 21?</p> <p>17 A I would need to verify from the permit deviation</p> <p>18 report that was submitted to what test stands</p> <p>19 those two engines were on.</p> <p>20 Q All right. So engines that were included in the</p> <p>21 September 2008 permit application were, as of this</p> <p>22 date, May 24, 2011 -- two of them were deemed to</p> <p>23 be non-permitted AVL engines?</p> <p>24 A I don't recall.</p> <p>25 Q Well, why was this note here on non-permitted AVL</p>
<p style="text-align: right;">Page 158</p> <p>1 A During this meeting there would not have been a</p> <p>2 date established.</p> <p>3 Q And then there's bullets for pros and cons under</p> <p>4 there. The first con is "Non-permitted AVL</p> <p>5 engines." What does that refer to?</p> <p>6 A I believe from the 2008 construction permit</p> <p>7 submittal there were engines and potentially test</p> <p>8 stands that were not yet submitted to the State.</p> <p>9 Q Help me understand that. Does that mean AVL was</p> <p>10 then using test stands that had not been submitted</p> <p>11 to the State?</p> <p>12 A I believe so.</p> <p>13 Q So at this point in time AVL was actually</p> <p>14 operating test stands that were not included in a</p> <p>15 permit?</p> <p>16 A I can't definitively say whether they were testing</p> <p>17 those engines, but they were getting ready to set</p> <p>18 up on specific test stands that weren't in the</p> <p>19 submittal.</p> <p>20 Q Which AVL test stands were in the submittal?</p> <p>21 MR. DeGEORGE: Are you look for the</p> <p>22 construction permit?</p> <p>23 THE WITNESS: I am.</p> <p>24 MR. DeGEORGE: I think that's the</p> <p>25 biggest one.</p>	<p style="text-align: right;">Page 160</p> <p>1 engines?</p> <p>2 A Because personally I had a concern over what was</p> <p>3 submitted in 2008 and if that was accurate to</p> <p>4 reflect what was currently out in that building.</p> <p>5 Q Well, how many engines was AVL testing as of</p> <p>6 May 24, 2011?</p> <p>7 A I wouldn't know for sure.</p> <p>8 Q Had they changed any of the stack designations</p> <p>9 from when the September 2008 submittal was made?</p> <p>10 A I would need to verify that that was one of the</p> <p>11 four.</p> <p>12 Q Assuming the engines being tested by AVL in the OP</p> <p>13 building as of May 24, 2011, were still on the</p> <p>14 same stacks identified in the September 2008</p> <p>15 application, would they by May 24, 2011, have been</p> <p>16 deemed to be non-permitted AVL engines?</p> <p>17 A Yes, because we wouldn't have received the</p> <p>18 finalized permit back yet from the State.</p> <p>19 Q But by indicating here in this slide presentation</p> <p>20 as of May 24, 2011 -- more than one of the AVL</p> <p>21 engines were considered to be non-permitted,</p> <p>22 correct, because it says "engines" plural.</p> <p>23 A That would lead me to believe more than one. Yes.</p> <p>24 Q As of this point in time were non-permitted?</p> <p>25 A What memory serves me because we had multiple</p>

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1 discussions trying to figure out alternatives was,  
2 again, based on that footnote interpretation, it  
3 was clear for compliance demonstration that we had  
4 a fuel use. That was clear to everyone. What was  
5 unclear was if you could run on a test stand with  
6 a stack that was indicated in a footnote. So the  
7 reason I put a con here is if we meet with DNR,  
8 this could potentially be brought up.  
9 Q But if you didn't meet with DNR, the hope was they  
10 wouldn't bring this up or make an issue out of it?  
11 A No. What we were trying to do was get all of the  
12 paperwork in order and get a finalized permit from  
13 the State.  
14 Q Right. But it was a con for an upcoming meeting  
15 with DNR because --  
16 A That's correct.  
17 Q -- if you discussed the issue, you were afraid  
18 WDNR would say you can't continue to test.  
19 A Yes.  
20 Q Because it would be in violation of the permit.  
21 A Yes. It wouldn't necessarily be that they would  
22 tell us we couldn't test, but it may be an  
23 indication on how they interpret the permit.  
24 Q Well, there's two bullet points here under the  
25 cons. One says "Non-permitted AVL engines." The

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1 other says "Using stacks not identified in  
2 permit." Are they the same issue or two different  
3 issues?  
4 A Two different issues.  
5 Q What is using stacks not identified in permit?  
6 A I'm sorry. That's the first part I mentioned, the  
7 reference to the four stacks.  
8 Q All right. So the reference to the four stacks in  
9 the September 2008 construction permit  
10 application, right?  
11 A Correct.  
12 Q Those four stacks -- some of them were not  
13 identified in the then-existing permit, right?  
14 A Yes. And then, again, it would be subject to  
15 interpretation based on -- if you submit a permit  
16 application, is that acceptable if you're already  
17 making changes or do you need to wait until you  
18 have received your finalized permit from the  
19 State.  
20 Q Well, the stacks were omitted from the 2005 P10  
21 permit, right?  
22 A Yes.  
23 Q And the P10 permit, as of May 24, 2011, was still  
24 governing emissions at the facility, right?  
25 A Yes.

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1 Q The stacks that had been omitted from the modeling  
2 of that permit -- FME never suggested anywhere to  
3 WDNR that any of those stacks would be brought  
4 back online, correct?  
5 A I may be misunderstanding, but we submitted in  
6 September 2008 the stacks that we had intentions  
7 to use.  
8 Q Right. My question is for the stacks that were  
9 not included in footnote 22 of the original 2005  
10 submission, the then-governing P10 permit.  
11 A Yes.  
12 Q Right?  
13 A Correct.  
14 Q You never made any submission to WDNR that said  
15 you would be bringing stacks back online. Or did  
16 you?  
17 A We did. That's what this construction permit was  
18 for.  
19 Q That's what the construction permit was for?  
20 A Yes.  
21 Q So which stacks were in the construction permit  
22 that were in footnote 22?  
23 A I need to find the air permit. It looks like S20C  
24 was listed.  
25 Q In footnote 22 of the P10 application?

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1 A That's correct.  
2 Q Or the P10 permit, I should say. So S20C, right?  
3 A Correct.  
4 Q That was in footnote 22 of the P10 permit, right?  
5 A Yes.  
6 Q And it was also included in the September 2008  
7 construction application, right?  
8 A Yes.  
9 Q As identified as one that AVL would be testing on?  
10 A Yes.  
11 Q Do you have an understanding of what test stands,  
12 what stacks, AVL was ultimately assigned to use  
13 for testing?  
14 A I do not.  
15 Q Do you know whether AVL was using S21A? If we can  
16 help you try to find a document, I would be happy  
17 to.  
18 A I'm just looking for a picture of the stacks  
19 outside that were in a couple of these  
20 presentations.  
21 Could you repeat that question?  
22 Q Sure. Let me take you back. You had identified  
23 S20C as a stack that was in footnote 22 of the P10  
24 permit as having been removed from the modeling,  
25 right?

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1 A Yes.  
2 Q And S20C also appeared in the September 2008  
3 construction application --  
4 A Yes.  
5 Q -- as a stack that AVL would be using, right?  
6 A Yes.  
7 Q But there were different stacks assigned to AVL  
8 other than what was identified in the September  
9 2008 application. Or don't you know that?  
10 A I know of one test stand.  
11 Q Which one is that?  
12 A It was a shared test stand. I believe it was 21F.  
13 Q Was 21F in footnote 22?  
14 A It was not.  
15 Q Do you know of AVL use of S21A or S21B?  
16 A Yes. They used that test stand.  
17 Q But neither S21A nor S21B were included in the  
18 September 2008 application, correct?  
19 A That's correct.  
20 Q So at least S21A and S21B were not subject to a  
21 pending construction permit application as of  
22 May 24, 2011.  
23 A That's correct. At the time, when this was  
24 submitted, I was not informed that they would be  
25 using that test stand.

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1 Q All right. So as of May 24, 2011, in  
2 Plaintiff's 21 -- the reference here to using  
3 stacks not identified in permit -- did that  
4 include stacks that AVL was using that were in  
5 footnote 22 of P10 but not included in the  
6 September 2008 application?  
7 A You're going to have to ask that one more time a  
8 little slower.  
9 Q I'll be happy to.  
10 Plaintiff's Exhibit 21 at page 8.  
11 MR. DeGEORGE: That's this one.  
12 A Okay.  
13 Q The second bullet point under "Cons" in the upper  
14 slide is "Using Stacks Not Identified in Permit."  
15 As of May 24, 2011, AVL was using S21A and S21B,  
16 correct?  
17 A Correct.  
18 Q And neither of those two stacks were included in  
19 the September 2008 construction application,  
20 right?  
21 A That is correct.  
22 Q But both of those stacks were listed in  
23 footnote 22 as having been withdrawn from the  
24 modeling?  
25 A That's correct.

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1 Q So as of May 24, 2011, those two stacks at least  
2 were stacks not identified in the permit.  
3 A Correct.  
4 Q So they also then were not subject to what you  
5 described earlier as an issue of you thought maybe  
6 they might be covered because you had a  
7 construction permit pending, right?  
8 A Correct.  
9 Q So were those two stacks part of what you  
10 indicated here in the slide as stacks not  
11 identified in the permit?  
12 A Yes.  
13 Q Returning to the non-permitted AVL engines -- you  
14 mentioned that's a different issue than using  
15 stacks not identified in the permit. How is that  
16 different?  
17 A The engines that they gave us again were listed as  
18 typical, and I wanted to ensure that those engines  
19 that were onsite would have been properly  
20 submitted to the State.  
21 Q And as of May 24, 2011, you didn't know whether or  
22 not that was the case?  
23 A We were working on obtaining information at that  
24 same time from AVL on what those engines and  
25 emissions were.

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1 Q So as of May 24, 2011, you didn't yet have enough  
2 information to know whether or not the AVL engines  
3 were properly permitted?  
4 A I don't exactly recall for that point.  
5 Q When did that concern first arise, the  
6 non-permitted AVL engines concern?  
7 A I'm unsure.  
8 Q When did the using stacks not identified in permit  
9 issue first arise?  
10 A When I went out to the OP building to identify  
11 what stacks they were connected to.  
12 Q And when did you do that?  
13 A Likely around April 2011.  
14 Q When that concern first came to your attention in  
15 April of 2011, who did you tell about that? Did  
16 you share your concern with anyone?  
17 A Yes. We talked about it internally.  
18 Q Who did you talk to?  
19 A John Bottorff would have known. I don't recall  
20 the others.  
21 Q Why would John have known?  
22 A Because he was my direct supervisor.  
23 Q Do you specifically remember telling him?  
24 A I don't specifically remember telling him.  
25 Q Do you specifically remember telling anyone else?

<p style="text-align: right;">Page 169</p> <p>1 A No. But, again, my notes -- whomever was in this 2 May 24th meeting -- we discussed this then. 3 Q Do you recall who was present at the May 24th 4 meeting? 5 A I do not recall. 6 Q Did you present this slide presentation at the 7 May 24th meeting? 8 A I did. Yes. 9 Q Did you distribute it either before or afterward 10 to anyone? 11 A I don't recall. 12 Q Did you cover every one ever the slides in your 13 presentation? 14 A Yes. 15 Q So this slide on page 8 at the top -- that was 16 covered? 17 A Yes. 18 Q What was the reaction of the people present to the 19 cons issue for non-permitted AVL engines and using 20 stacks not identified in the permit? 21 A That we needed to work with the State and ensure 22 we were in compliance. 23 Q Well, this is a con relative to an upcoming 24 meeting with WDNR, right? 25 A Yes.</p>	<p style="text-align: right;">Page 171</p> <p>1 A Yes. 2 Q As of May 24, 2011? 3 A It was April-May timeframe. I'm not exactly sure 4 when the conversations were had. 5 Q Was it before or after May 24th? 6 A I don't recall. 7 Q At some point in time you had a discussion. 8 A Absolutely. 9 Q And this is Mark Thimke again? 10 A Yes. 11 Q And Mark Thimke offered his impression that the 12 fact that those stacks had been omitted from 13 footnote 22 -- 14 THE WITNESS: I'm sorry. Can I 15 take a break? 16 MR. HERRMANN: Yes. Sure. Go 17 ahead. 18 (Recess) 19 Q Earlier today we discussed the meeting with WDNR 20 where Mr. Thimke was present, correct? 21 A Correct. 22 Q And is that where he voiced his opinion about the 23 absence of the stacks from the footnote not being 24 a prohibition of their use? 25 A No. It was a meeting at Fairbanks that he</p>
<p style="text-align: right;">Page 170</p> <p>1 Q Was there a discussion of not even raising these 2 issues with DNR? 3 A No. 4 Q When was this next discussed with DNR? 5 A It would have been in the next month. I don't 6 recall the date. 7 Q Did you feel -- go ahead. 8 A Maybe June 11th. 9 Q Did you feel at this point in time, as of May 24, 10 2011, that it would have been appropriate to 11 notify DNR of your discovery of the stacks not 12 being included in the permit? 13 A I did not feel at that time it was necessary. 14 Q Why not? 15 A Because of the interpretation from an 16 environmental attorney stating that compliance was 17 based on fuel use limitation and not what stacks 18 you used. 19 Q I don't want to know discussions with an attorney 20 for FME, but when you say "the interpretation of 21 an environmental attorney" -- an attorney for FME? 22 A No. AVL. 23 Q Had you had a meeting with an attorney from AVL 24 that addressed this issue of stacks not 25 identified --</p>	<p style="text-align: right;">Page 172</p> <p>1 participated in. 2 Q And that was before the meeting with DNR? 3 A Yes. 4 Q So by that time at that meeting the issue of the 5 stacks in use that were not part of the permit had 6 already been discussed? 7 A Yes. 8 Q Was that meeting before or after May 24th of 2011? 9 A I believe it was before. 10 Q When? 11 A April-ish of 2011. 12 Q What leads you to believe it was before? 13 A Because it was trying to work with AVL to come up 14 with alternatives on what we need to do because w 15 were encroaching the fuel usage limit. 16 Q When did the issue of the stacks not being in the 17 permit first come up? 18 A I don't recall. 19 Q Do you know who at AVL was involved in these 20 discussions? 21 A I'm trying to think of who was in attendance 22 during that meeting. I remember Bob Maly. I 23 remember Mark Thimke. There were a few others. I 24 guess I'm unsure as to the others. 25 Q You're sure of Bob Maly and Mark Thimke, though?</p>

<p style="text-align: right;">Page 173</p> <p>1 A Yes.</p> <p>2 Q Now, earlier you had told me when you went out and</p> <p>3 discovered that stacks were being used that were</p> <p>4 not part of the P10 permit -- that was sometime in</p> <p>5 April, right?</p> <p>6 A I believe so.</p> <p>7 Q And the only person you would have reported that</p> <p>8 to was Mr. Bottorff, right?</p> <p>9 A It would have been an internal review about the</p> <p>10 scenario. Pete would have been --</p> <p>11 Q Go ahead.</p> <p>12 A -- included. Again, I apologize. I just don't</p> <p>13 exactly recall.</p> <p>14 Q But it would have been an internal meeting of only</p> <p>15 FME attendees, right? When you first found out</p> <p>16 about it, you had an internal meeting. That was</p> <p>17 the first step; is that right?</p> <p>18 A It wasn't like it was some ah-hah moment when I</p> <p>19 went out there and the stack was connected. It</p> <p>20 may have been that I went out there following one</p> <p>21 of these meetings with AVL to discuss the</p> <p>22 situation. I'm unclear of the timing.</p> <p>23 Q So you don't know when AVL first heard of this</p> <p>24 stacks permitting issue versus when you first</p> <p>25 heard of it?</p>	<p style="text-align: right;">Page 175</p> <p>1 Do you recall the talking points being discussed?</p> <p>2 A Just for clarification, you're asking if I</p> <p>3 remember the talking points being discussed at the</p> <p>4 meeting with the WDNR?</p> <p>5 Q That's a fair clarification. Do you remember the</p> <p>6 talking points being discussed before the meeting</p> <p>7 with WDNR?</p> <p>8 A No. I do not recall.</p> <p>9 Q Do you remember the meeting with WDNR on</p> <p>10 June 11th?</p> <p>11 A Yes.</p> <p>12 Q What do you remember about that meeting?</p> <p>13 A I remember Don Faith at that meeting having the</p> <p>14 statement by stating that we better not be running</p> <p>15 engines on stacks that are not within the permit.</p> <p>16 Q And you mentioned that to me earlier today, right?</p> <p>17 A Yes.</p> <p>18 Q That occurred at this June 11th meeting?</p> <p>19 A Yes.</p> <p>20 Q Now, I don't see in the talking points that were</p> <p>21 prepared beforehand any reference to the stacks</p> <p>22 issue. Feel free to review it yourself. Do you</p> <p>23 recall whether there was discussion of whether or</p> <p>24 not to include that issue for this meeting?</p> <p>25 A I don't recall that.</p>
<p style="text-align: right;">Page 174</p> <p>1 A Correct. I don't.</p> <p>2 Q You don't know anything about the timing of that?</p> <p>3 A I don't recall what the timing is.</p> <p>4 Q You have Plaintiff's Exhibit 23. Do you recall</p> <p>5 this document?</p> <p>6 A I don't explicitly remember this.</p> <p>7 Q Do you recall seeing the letter from Ray Corbin to</p> <p>8 Mr. Whittier?</p> <p>9 A I don't recall, but I must have because it was</p> <p>10 sent to me.</p> <p>11 Q You see at the top e-mail on the first page</p> <p>12 Mr. Bottorff sends it to you and others.</p> <p>13 A Yes.</p> <p>14 Q And comments that the letter does not provide</p> <p>15 responses to issues that we raised in the letter.</p> <p>16 Do you know what that refers to?</p> <p>17 A I don't, but I'm assuming it's some letter we sent</p> <p>18 to him to get some answers.</p> <p>19 Q Do you recall one way or the other?</p> <p>20 A I don't recall.</p> <p>21 Q You have Plaintiff's Exhibit 27. Do you recall</p> <p>22 this document?</p> <p>23 A I don't recall.</p> <p>24 Q There's a mention to a meeting with WDNR tomorrow</p> <p>25 morning and an attached list of talking points.</p>	<p style="text-align: right;">Page 176</p> <p>1 Q You don't recall one way or the other whether</p> <p>2 there was a discussion among FME only or between</p> <p>3 FME and AVL about whether to address a stacks</p> <p>4 issue?</p> <p>5 A No. I don't recall.</p> <p>6 Q Did anyone at FME tell you at any time or direct</p> <p>7 you at any time not to discuss the stacks concern</p> <p>8 with WDNR?</p> <p>9 A No.</p> <p>10 Q Was that your own decision?</p> <p>11 A Was what my own decision?</p> <p>12 Q Your decision not to raise the stacks issue with</p> <p>13 WDNR prior to the June 11th meeting.</p> <p>14 A I don't recall that it -- Don Faith made that</p> <p>15 statement when we were talking through some</p> <p>16 points. I don't know that we specifically brought</p> <p>17 up about the stacks.</p> <p>18 Q I understand. My issue is it was on your cons</p> <p>19 list as of May 24, 2011. My first question was</p> <p>20 did anyone at FME ever tell you "You have got that</p> <p>21 up on your slide show, Ms. Mosley. Let's not talk</p> <p>22 to WDNR about it"?</p> <p>23 A No. No one said that.</p> <p>24 Q So to the extent that issue was not discussed with</p> <p>25 WDNR prior to June 11th, that was, as far as you</p>

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1 were concerned, your own decision?

2 A Yes.

3 (Exhibit No. 120 marked for

4 identification)

5 Q You have plaintiff's Exhibit 120.

6 MR. DeGEORGE: Give me 15 seconds.

7 MR. HERRMANN: Sure.

8 (Recess)

9 MR. DeGEORGE: Okay.

10 Q Do you recall Plaintiff's 120?

11 A I do not recall.

12 Q This proposes a meeting on Monday, June 13th. Do

13 you recall attending such a meeting?

14 A I don't recall the meeting, but I'm sure I was in

15 attendance according to this.

16 Q You don't remember anything about the meeting?

17 A I don't.

18 (Exhibit No. 121 marked for

19 identification)

20 Q You have Plaintiff's 121. These are not your

21 notes, I take it?

22 A They are not.

23 Q Do you recall attending a meeting on June 20,

24 2011, with John Bottorff regarding the 2005

25 permit?

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1 A I'm sorry. I don't recall.

2 Q Do you recall any discussion with Mr. Bottorff at

3 any time regarding some listing of stacks being

4 wrong in the permit?

5 A Not specifically. We had lots of conversation.

6 Q Do you recall that topic, though, about stacks

7 being listed wrong?

8 A No.

9 Q On his first page here he also has a note "Tried

10 to correct operating permit renewal 2010." Do you

11 remember trying to correct any stacks issues in

12 the 2010 renewal? We did discuss that one earlier

13 today.

14 A Yes. I would have to refer back to the

15 documentation. I don't recall.

16 Q Which document would you refer to?

17 A Where we talked about with the six bold items, the

18 bulleted items --

19 Q But that would be --

20 A -- for the changes.

21 Q Right. I recall that. Those six bold items were

22 the changes in the renewal of the P10 permit,

23 right?

24 A Right.

25 Q Were those the only corrections that needed to be

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1 made?

2 A I don't recall.

3 (Exhibit No. 122 marked for

4 identification)

5 Q You have Plaintiff's Exhibit 122. Do you recall

6 this document?

7 A I don't recall.

8 Q Did you attend the meeting that's referenced here,

9 the meeting with WDNR?

10 A Yes.

11 Q What do you recall about that meeting?

12 A That is the same meeting that Don Faith indicated

13 that if we were testing engines on stacks that

14 were not within the modeling, it would be an

15 issue.

16 Q Would you agree with Lee that the meeting did not

17 go well?

18 A Yes.

19 Q Why?

20 A Because of that statement.

21 Q Any other reason?

22 A I don't recall, but I believe that they were

23 unable to make any progress with any of the

24 alternatives.

25 ///

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1 (Exhibit No. 123 marked for

2 identification)

3 Q You have Plaintiff's 123. Do you recall this one?

4 A Yes.

5 Q What is this document?

6 A This is the deviation report that was submitted to

7 WDNR following the meeting with them identifying

8 two test stands that were running for the total

9 amount of days that they were running and how much

10 fuel was used.

11 Q This was one of the deviation reports you

12 described earlier?

13 A Correct.

14 Q So in your e-mail to Brian Barbieur you reference

15 his return voicemail.

16 A Yes.

17 Q You had called him earlier?

18 A I had called him. I know originally I called him

19 verbally to talk through the compliance issue.

20 Q The compliance issue being the stacks being used?

21 A Correct.

22 Q When did you first call him?

23 A I believe it was -- it was after the meeting with

24 the DNR.

25 Q Just so I'm clear, what date was that meeting?

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1 A It would have been after Wednesday, June 15th.  
 2 Q So some time after Wednesday, June 15th, you  
 3 called Brian Barbieur on the phone?  
 4 A Yes.  
 5 Q Did you speak with him or leave a voicemail?  
 6 A I'm pretty certain I left a voice message.  
 7 Q What did you report to him in your voicemail?  
 8 A That it was identified that there are two engines  
 9 that are being tested with stacks that are not  
 10 listed in the air permit.  
 11 Q Why only two engines?  
 12 A The other stacks that we were using were listed in  
 13 the permit.  
 14 Q In the permit or in the application?  
 15 A In the permit.  
 16 Q Was there any stack that you deemed exempt from  
 17 reporting at this time because it had been listed  
 18 in the --  
 19 A No.  
 20 Q Let me finish so we're clear.  
 21 In the September 2008 construction permit  
 22 application.  
 23 A No.  
 24 Q Well, one of those stacks that AVL was using had  
 25 been omitted from the permit per footnote 22, but

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1 it was included in the September 2008 construction  
 2 application, right?  
 3 A I believe that to be correct.  
 4 Q So we previously talked about two stacks being  
 5 used by AVL, S21A and S21 B, right?  
 6 A Yes.  
 7 Q And those would be in violation as of this time  
 8 that you made the report, correct?  
 9 A I believe that's correct, but I just want to make  
 10 sure that those two stacks are associated with  
 11 test stand eight.  
 12 Can you state that one more time?  
 13 Q Sure. Let's put it this way: In this deviation  
 14 report, Plaintiff's 123, are you identifying  
 15 stacks to the DNR or are you identifying test  
 16 stands?  
 17 A I'm identifying test stands.  
 18 Q Do you know at this time which stacks were  
 19 connected to those test stands?  
 20 A I believe so.  
 21 Q Do you know whether more than one stack was  
 22 connected to a particular test stand?  
 23 A Yes.  
 24 Q Which one?  
 25 A Stack eight was, if memory serves me correct, the

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1 only one that had a dual stack, and it was  
 2 connected to S21A and S21B.  
 3 Q So stack eight at this point was deemed to be in  
 4 violation, and it was connected to those two  
 5 stacks you just mentioned?  
 6 A Yes.  
 7 Q What stack was stand ten connected to?  
 8 A I believe it was S20C.  
 9 Q So this deviation report involves a report on  
 10 three stacks, right?  
 11 A Yes.  
 12 Q You reported this via voicemail some time after  
 13 the June 15th meeting?  
 14 A Correct.  
 15 Q Do you know whether it was over the weekend?  
 16 A It would not have been on a weekend.  
 17 Q So it would have either been the 16th or the 17th  
 18 of June?  
 19 A I believe so.  
 20 Q He didn't return your call until Monday morning or  
 21 Monday at some point?  
 22 A I believe he worked four ten-hour days, so he  
 23 wouldn't be in the office on Fridays.  
 24 Q What did he say in his return voicemail to you on  
 25 June 20th?

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1 A I don't recall.  
 2 Q Did that voicemail go to your e-mail system? Was  
 3 your phone connected to your e-mail at this point?  
 4 A I think so.  
 5 Q So that voicemail would be in your e-mail system?  
 6 A I think so.  
 7 Q And then in this e-mail transmission you attach  
 8 your deviation report. If you look at your  
 9 deviation report, you indicate "We continue to be  
 10 below the 30,333 gallon fuel use limitation for  
 11 the entire OP building."  
 12 A Yes.  
 13 Q Was that true at the time?  
 14 A Yes.  
 15 Q And then you say "Engine testing has ceased at  
 16 these test stand locations and will not resume  
 17 until approved by the department."  
 18 A Yes.  
 19 Q Were you confident at that time that the engine  
 20 testing had in fact ceased?  
 21 A Yes.  
 22 MR. DeGEORGE: Where are we in the  
 23 scheme of things?  
 24 MR. HERRMANN: We're close, Steve.  
 25 Q You have Plaintiff's Exhibit 32. Do you recall

<p style="text-align: right;">Page 185</p> <p>1 this e-mail?</p> <p>2 A I don't recall.</p> <p>3 Q Did you have any role in processing purchase</p> <p>4 orders for the AVL relationship?</p> <p>5 A None.</p> <p>6 Q Do you recall what question you asked of</p> <p>7 Pete DiCaro that he's responding to in his</p> <p>8 June 22nd e-mail?</p> <p>9 A I don't recall.</p> <p>10 Q You have Plaintiff's Exhibit 68. Do you recall</p> <p>11 this exhibit?</p> <p>12 A I don't recall.</p> <p>13 Q Do you recall what happened with the non-permitted</p> <p>14 stacks in the wake of their shutdown following the</p> <p>15 WDNr's notice?</p> <p>16 A I recall that the two test stands that were</p> <p>17 reported in deviation were reconnected and</p> <p>18 re-piped to stacks that were within the permit.</p> <p>19 Q Did you have any understanding of whether only one</p> <p>20 engine could run at a time in paragraph 1?</p> <p>21 A I recall the way they did the piping it was</p> <p>22 connected to both, but they ran a blank flange so</p> <p>23 that it would be directed to the permitted stack.</p> <p>24 Q So there was a redirection of exhaust from AVL</p> <p>25 tested engines to permitted stacks from</p>	<p style="text-align: right;">Page 187</p> <p>1 additional fuel burn?</p> <p>2 A Yes. But, again, it couldn't have been processed</p> <p>3 because it wasn't accurate.</p> <p>4 Q And you said you would submit a new one?</p> <p>5 A Yes.</p> <p>6 Q When would that happen?</p> <p>7 A I don't recall that there was ever one submitted.</p> <p>8 Q Do you know why?</p> <p>9 A Because of the fuel use limitation in the OP</p> <p>10 building, AVL wasn't able to fulfill contract</p> <p>11 requirements with their customers. I believe then</p> <p>12 there was no longer a need.</p> <p>13 Q How did you come to learn about that issue of AVL</p> <p>14 not being able to fulfill its contracts with its</p> <p>15 customers?</p> <p>16 A I learned of that through Bob Maly at AVL.</p> <p>17 Q Did you hear it from anyone internally at FME?</p> <p>18 A I'm unsure.</p> <p>19 Q When did Bob Maly tell you that?</p> <p>20 A Him and I worked closely. We probably talked</p> <p>21 daily in light of the situation to try to figure</p> <p>22 out the best avenue to move forward. I don't</p> <p>23 recall a date.</p> <p>24 (Exhibit No. 125 marked for</p> <p>25 identification)</p>
<p style="text-align: right;">Page 186</p> <p>1 non-permitted stacks, correct?</p> <p>2 A Correct.</p> <p>3 Q Do you have any understanding of what impact that</p> <p>4 had on AVL's ability to test those engines?</p> <p>5 A I wouldn't know that.</p> <p>6 (Exhibit No. 124 marked for</p> <p>7 identification)</p> <p>8 Q You have Plaintiff's Exhibit 124. Do you</p> <p>9 recognize it?</p> <p>10 A I don't recognize it.</p> <p>11 Q Do you recall the subject matter of the permit</p> <p>12 currently under review being withdrawn?</p> <p>13 A I do.</p> <p>14 Q Why was that done?</p> <p>15 A Because what was submitted originally in 2008 was</p> <p>16 no longer accurate.</p> <p>17 Q Why not?</p> <p>18 A AVL was now testing on different test stands.</p> <p>19 There were different engines. We wanted to get</p> <p>20 the information as accurate as possible.</p> <p>21 Q Is that all you recall about it; just to make sure</p> <p>22 that it was as accurate as possible?</p> <p>23 A Yes.</p> <p>24 Q By withdrawing that application, did that</p> <p>25 eliminate what was then in process to get</p>	<p style="text-align: right;">Page 188</p> <p>1 Q You have Plaintiff's Exhibit 125. Do you recall</p> <p>2 receiving this e-mail from Mr. DiCaro?</p> <p>3 A I don't recall.</p> <p>4 Q Do you recall having any discussions with anyone</p> <p>5 at FME about the building lease for the OP</p> <p>6 building?</p> <p>7 A I don't recall.</p> <p>8 Q For any purpose whatsoever? No?</p> <p>9 A No.</p> <p>10 Q You have Plaintiff's 34. Have you seen this</p> <p>11 document before?</p> <p>12 A I don't recall.</p> <p>13 Q Do you recall attending a June 28, 2011, meeting</p> <p>14 where any of the items listed on this agenda were</p> <p>15 discussed?</p> <p>16 A No. I'm sorry. I don't recall.</p> <p>17 Q You have Plaintiff's Exhibit 38. Do you recall</p> <p>18 this document?</p> <p>19 A I don't recall.</p> <p>20 Q Do you recall ever preparing what you understand</p> <p>21 to be a letter terminating or not renewing the</p> <p>22 master agreement with AVL?</p> <p>23 A I don't believe I prepared this.</p> <p>24 Q Do you recall the voicemail you left with</p> <p>25 Barb Spencer?</p>

<p style="text-align: right;">Page 189</p> <p>1 A I do not.</p> <p>2 Q Was Barb George Whittier's assistant at the time?</p> <p>3 A I'm not sure I recall who Barb is. She must have</p> <p>4 been.</p> <p>5 Q Did you have any personal involvement at any time</p> <p>6 with any letter that purported to terminate or not</p> <p>7 renew the master agreement?</p> <p>8 A I believe I had discussion with the EnPro legal</p> <p>9 counsel.</p> <p>10 Q I don't want to hear about those.</p> <p>11 A I understand. That's all I think I know.</p> <p>12 Q All right. Did you have any involvement with or</p> <p>13 any understanding of whether such a letter ever</p> <p>14 was delivered or not delivered to AVL?</p> <p>15 A I was involved with a meeting or in a meeting</p> <p>16 where George presented a letter stating to AVL</p> <p>17 that we would not renew their contract.</p> <p>18 Q How did you know what was in that letter?</p> <p>19 A It may have been sent to me from EnPro legal.</p> <p>20 Q May have been. Do you know whether it was or not?</p> <p>21 A I don't recall.</p> <p>22 Q Do you know whether the letter was or was not</p> <p>23 delivered?</p> <p>24 A The letter was delivered in a meeting.</p> <p>25 Q How do you know what was in the letter?</p>	<p style="text-align: right;">Page 191</p> <p>1 In that meeting I remember George handing them</p> <p>2 this letter.</p> <p>3 Q Did you review the letter as George handed it</p> <p>4 over?</p> <p>5 A I did not.</p> <p>6 Q How do you know it was this letter?</p> <p>7 A Because he said during that point in time that it</p> <p>8 was a letter to not extend the contract.</p> <p>9 Q George said this?</p> <p>10 A Yes.</p> <p>11 Q And who was present at the meeting?</p> <p>12 A There were several people in attendance.</p> <p>13 John Bottorff definitely was there. I remember</p> <p>14 Chet Ritters (sic) was there. Pete DiCaro would</p> <p>15 have been there.</p> <p>16 Q Is that Chet Rickers?</p> <p>17 A Yes. I'm sorry. Yes. Thank you.</p> <p>18 Q Did you get a copy of the letter that was</p> <p>19 delivered?</p> <p>20 A I did not.</p> <p>21 Q Did you ever see the letter that was delivered?</p> <p>22 A I did not.</p> <p>23 Q So the only thing is you heard Mr. Whittier say</p> <p>24 that the letter he was handing was a letter not</p> <p>25 renewing the agreement?</p>
<p style="text-align: right;">Page 190</p> <p>1 A I believe that EnPro legal drafted the letter, and</p> <p>2 I think I sent it on to at the time it would have</p> <p>3 been Barb to put it on his letterhead.</p> <p>4 Q Do you know whether that was done? Whether it was</p> <p>5 put on his letterhead?</p> <p>6 A It was absolutely done.</p> <p>7 Q Was that Plaintiff's Exhibit 38?</p> <p>8 A Yes.</p> <p>9 Q Now, if you look at the attachment, it's dated</p> <p>10 June 30, 2011?</p> <p>11 A Yes.</p> <p>12 Q Is that the letter you're referring to?</p> <p>13 A Yes.</p> <p>14 Q So it was put on George Whittier's letterhead at</p> <p>15 this point?</p> <p>16 A I believe so.</p> <p>17 Q And did Mr. Whittier sign this letter?</p> <p>18 A I'm sorry. I don't recall that.</p> <p>19 Q So you don't know if he signed the letter?</p> <p>20 A No.</p> <p>21 Q If you don't know if he ever signed the letter,</p> <p>22 what causes you to remember that a letter that he</p> <p>23 signed was delivered?</p> <p>24 A I remember being in a meeting with AVL. It was</p> <p>25 the first time that I had met the new president.</p>	<p style="text-align: right;">Page 192</p> <p>1 A Yes.</p> <p>2 Q Where was that meeting held?</p> <p>3 A Fairbanks Morse Engine in the president's</p> <p>4 conference room.</p> <p>5 Q Do you remember the date?</p> <p>6 A I do not recall.</p> <p>7 Q Did you keep any notes of that meeting?</p> <p>8 A I don't recall.</p> <p>9 Q Why were you in attendance?</p> <p>10 A I don't recall.</p> <p>11 Q Do you remember what else was discussed at that</p> <p>12 meeting?</p> <p>13 A I believe this is the meeting that we were still</p> <p>14 trying to figure out any other solutions to help</p> <p>15 AVL test their engines, and I recall bringing up</p> <p>16 -- I think I was sitting next to Chet. I said I</p> <p>17 don't know if this is even a possibility, but</p> <p>18 maybe there's some testing that could be done in</p> <p>19 the large engine building.</p> <p>20 Q You have Plaintiff's Exhibit 44. Are these your</p> <p>21 notes?</p> <p>22 A They are not.</p> <p>23 Q Do you recognize the notes?</p> <p>24 A Yes. I recognized the handwriting.</p> <p>25 Q The handwriting is?</p>

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1 A John Bottorff.  
2 Q And this is dated 9/23/2011. It's got attendees  
3 identified from AVL and FME, correct?  
4 A Yes.  
5 Q Do you recall from this whether it was the  
6 September 23, 2011, meeting where George Whittier  
7 discussed the non-renewal?  
8 A I'm sorry. I don't remember.  
9 Q You don't remember?  
10 A No.  
11 Q Do you know if the meeting you recall was before  
12 or after this one?  
13 A I couldn't say.  
14 Q If you turn to the last page, there's a note at  
15 the end: "George, I can draft letter of not  
16 renewing." Do you see that?  
17 A Yes.  
18 Q Do you know what that refers to?  
19 A I'm assuming it's this letter marked FME 002881.  
20 Q Well, that was for June, right?  
21 A Yes. I'm unsure.  
22 Q Unsure of what?  
23 A What that is a reference to.  
24 Q Do you know whether the letter that you have  
25 described was delivered before or after

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1 September 23 of 2011?  
2 A I would not know.  
3 Q You seem to have a pretty good memory of the  
4 meeting where the letter was delivered. Did you  
5 review anything prior to the deposition that  
6 refreshed your memory about that?  
7 A No. There's just a few meetings that are very  
8 familiar in my mind.  
9 Q Why is that one familiar in your mind?  
10 A Because when I had brought up the large engine  
11 building with Chet -- you could feel that he was  
12 very appreciative that we were still working with  
13 them to find other avenues to work with them.  
14 Q Was it you who first brought up the use of the  
15 large engine building?  
16 A I believe so, but it was, again, with no  
17 commitments. It was just brainstorming ideas when  
18 I had brought it up.  
19 Q You have Plaintiff's Exhibit 40 previously marked.  
20 Do you recall this e-mail?  
21 A I do not specifically recall it.  
22 Q Does this relate to use of the large engine  
23 building for testing?  
24 A I believe so.  
25 Q What do you recall about the discussions about

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1 that going forward?  
2 A Again, we were trying to find out if there were  
3 any other alternatives to allow AVL to test  
4 engines for their customers.  
5 Q Were you involved in any discussions about  
6 potentially rewriting the master agreement?  
7 A I would not have been.  
8 MR. HERRMANN: I'm doing my best to  
9 reduce this to cut this short.  
10 (Exhibit No. 126 marked for  
11 identification)  
12 Q You have Plaintiff's Exhibit 126. Do you recall  
13 this document?  
14 A I don't recall.  
15 Q The attachment appears to be a rollup of potential  
16 costs per a quote from Universal Silencer dated  
17 10/22/10; is that right?  
18 A That's what it looks like.  
19 Q And then the chart on the right -- that's all of  
20 the costs that would be associated for various  
21 points at that facility?  
22 A Yes.  
23 Q And that includes both the large engine and OP  
24 building --  
25 A Yes.

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1 Q -- sites? So that would include FME locations in  
2 use as well as AVL locations in use?  
3 A Yes.  
4 Q Why was this estimate done back in October of  
5 2010?  
6 A I believe it was in reference to the change in  
7 federal regulations to State adoption. Yes.  
8 Q So does this relate to forward looking at some  
9 point FME would have to put controls on its  
10 stands?  
11 A I'm not sure exactly what this references, but  
12 that quote from them would have been forward  
13 looking.  
14 Q Forward looking to a time when it would be  
15 required for FME to spend that money and put those  
16 controls on?  
17 A When it would be required for FME to evaluate if  
18 controls were necessary due to the change in the  
19 regulation.  
20 (Exhibit No. 127 marked for  
21 identification)  
22 Q You have Plaintiff's Exhibit 127. Do you recall  
23 this?  
24 A I don't recall.  
25 Q There's a mention here in item number 2 of SEP

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1 review. "Is there any negative aspect to this?"  
 2 Do you recall what that referred to?  
 3 A I'm sorry. I do not recall.  
 4 MR. HERRMANN: Let's go off the  
 5 record for a minute.  
 6 (Recess)  
 7 Q Ms. Mosley, what were the circumstances under  
 8 which you left FME?  
 9 A I had another job opportunity.  
 10 Q And that was your current opportunity?  
 11 A That's correct.  
 12 Q Were you dismissed from FME?  
 13 A I was not.  
 14 Q You left voluntarily?  
 15 A Yes.  
 16 Q Did you leave with any form of separation package?  
 17 A No.  
 18 MR. HERRMANN: I have no further  
 19 questions.  
 20 MR. DeGEORGE: I just have a  
 21 couple.  
 22  
 23 EXAMINATION  
 24 By Mr. DeGeorge:  
 25 Q I want to pin down a couple days. I'll be very

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1 brief. We need to look at 122 and 123. I just  
 2 want to clarify two dates that I think you  
 3 testified about earlier today, Ms. Mosley, that  
 4 you thought Donald Faith with DNR had made the  
 5 comment about not using certain stacks at a  
 6 meeting on June 11th. Then I think it was  
 7 subsequent testimony which suggested that comment  
 8 was made at a meeting on June 15th. If you look  
 9 at Exhibit 122, the e-mail from Mr. Graeber to a  
 10 number of people including you -- this is Friday,  
 11 June 17. It says "The meeting with WDNR on  
 12 Wednesday did not go well." Does that clarify the  
 13 date issue at all in your mind?  
 14 A Yes. I think it was Wednesday, June 15, 2011.  
 15 Q At which Mr. Faith made that comment?  
 16 A Yes.  
 17 Q If you could look at Exhibit 123, your deviation  
 18 report --  
 19 A Yes.  
 20 Q On column four it says "Date Deviation Previously  
 21 Reported to DNR," and it says 6/17/11." What does  
 22 that signify to you?  
 23 A That would signify the date that I called  
 24 Brian Barbieur.  
 25 MR. DeGEORGE: Thanks.

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1 I don't have any other questions.  
 2 MR. HERRMANN: Nothing further.  
 3 Thank you.  
 4 (Adjourning at 5:51 p.m.)  
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1 STATE OF WISCONSIN }  
 2 COUNTY OF DANE } ss.  
 3 I, SUSAN C. MILLEVILLE, a Court Reporter  
 4 and Notary Public duly commissioned and qualified in  
 5 and for the State of Wisconsin, do hereby certify  
 6 that pursuant to notice, there came before me on the  
 7 20th day of November 2015, at 9:52 in the forenoon,  
 8 at the offices of Whyte Hirschboeck Dudek S.C.,  
 9 Attorneys at Law, 33 East Main Street, the City of  
 10 Madison, County of Dane, and State of Wisconsin, the  
 11 following named person, to wit: JULIE R. MOSLEY, who  
 12 was by me duly sworn to testify to the truth and  
 13 nothing but the truth of her knowledge touching and  
 14 concerning the matters in controversy in this cause;  
 15 that she was thereupon carefully examined upon her  
 16 oath and her examination reduced to typewriting with  
 17 computer-aided transcription; that the deposition is  
 18 a true record of the testimony given by the witness.  
 19 I further certify that I am neither  
 20 attorney or counsel for, nor related to or employed  
 21 by any of the parties to the action in which this  
 22 deposition is taken and further that I am not a  
 23 relative or employee of any attorney or counsel  
 24 employed by the parties hereto or financially  
 25 interested in the action.

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1 In witness whereof I have hereunto set my  
2 hand and affixed my notarial seal this 30th day of  
3 November 2015.

4  **Record**  
5 Inc.  
6 Excellence In Court Reporting

Digitally signed by Susan C. Milleville  
DN: cn=Susan C. Milleville, o=For the Record, Inc., ou,  
email=smilleville@fortherecordmadison.com, c=US  
Date: 2015.11.30 13:40:02 -0600

Notary Public, State of Wisconsin

7 My commission expires  
8 June 27, 2017  
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